

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE OF PAGES 1 2	
2. AMENDMENT/MODIFICATION NO. 0065		3. EFFECTIVE DATE See Block 16C		4. REQUISITION/PURCHASE REQ. NO.	
6. ISSUED BY NNSA M&O Contracting Branch NA-APM-131 Albuquerque Complex P.O. Box 5400 Albuquerque NM 87185-5400		CODE 05115		7. ADMINISTERED BY (If other than Item 6) NNSA Kansas City Field OFC NA-00-KC P.O. Box 410202 Kansas City MO 64141-0202	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) HONEYWELL Attn: John Ricciardelli 23500 WEST 105TH STREET MS 300 OLATHE KS 66061		(x)		9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (SEE ITEM 11)	
		x		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-NA0002839	
				10B. DATED (SEE ITEM 13) 07/09/2015	
CODE 007119050		FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF P.L. 95-91, Clause DEAR 970.5243-1 Changes
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

The purpose of this modification is to update the attached contractual elements. See page 2.

Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) John Ricciardelli, President Honeywell FMT		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Hilary A. Cole	
15B. CONTRACTOR/ORDER NO. [REDACTED]		16B. [REDACTED]	
15C. DATE SIGNED 2/8/18		16C. DATE SIGNED 2/12/18	
(Signature of person authorized to sign)		(Signature of Contracting Officer)	

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STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

Modification Review Checklist

- 1) SOW Updates
 - a. SBMC
 - b. Strategic planning clause
 - c. Oversight Model
- 2) Fee tables and Fee estimate
- 3) CLIN#2 Fee payout (Section B 3(b))
- 4) KP and salary
- 5) List of Applicable Directives / Modulo
- 6) Personnel Appendix
- 7) FY18 PEMP
- 8) FAR and DEAR Clauses

SECTION J, APPENDIX A: STATEMENT OF WORK**TABLE OF CONTENTS**

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CHAPTER I. Objectives, Scope, and Requirements

1.0 OBJECTIVE

The objective of this Contract is to obtain non-nuclear production services to support National Nuclear Security Administration (NNSA) and broader national security requirements. The Contractor shall be fully responsible for functions to support NNSA Stockpile Stewardship and Management Program activities directed by the Office of Defense Programs (DP). Furthermore, the Contractor shall directly support the NNSA Offices of Safeguards Transportation (OST) and Nuclear Non-Proliferation in addition to other Department of Energy (DOE) offices. Beyond DOE/NNSA, the Contractor shall provide unique services to ongoing missions for other Government agencies or privately owned organizations in accordance with policies identified in the operating requirements.

In addition to achieving Presidential goals outlined in the April 2010 Nuclear Posture Review, this Contract will strengthen NNSA's vision for a fully integrated and interdependent Nuclear Security Enterprise (NSE), consisting of all eight NNSA sites, by achieving the following three specific objectives:

- (i) Improving performance in the completion of national security missions for non-nuclear production operations;
- (ii) Reducing the cost of performing work; and
- (iii) Requiring actions that support operation as an integrated DOE/NNSA enterprise.

2.0 BACKGROUND

2.1 The NNSA Mission

The NNSA, established by Congress per the NNSA Act (Title XXXII of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65) as a semiautonomous element within DOE. NNSA is responsible for the management and security of the nation's nuclear weapons, non-proliferation, and naval propulsion programs. It also responds to nuclear and radiological emergencies in the United States and abroad. Additionally, NNSA federal agents provide safe and secure transportation of nuclear weapons, components and special nuclear materials, along with other missions supporting the national security.

2.2 The NNSA Organization

NNSA relies on Management and Operating (M&O) Contractors to manage day-to-day site operations and to adhere to its policies when operating its laboratories, production plants, and other facilities in the NSE in compliance with legal requirements and DOE/NNSA policies.

NNSA establishes the work to be accomplished by the Contractor and will provide program and performance direction regarding what NNSA wants in each of its programs. The Contractor will have the flexibility to use its expertise and ingenuity to determine how the work is to be accomplished and is accountable for assuring safe, secure, effective, and efficient operations, and providing directed deliverables in accordance with the terms and conditions of this Contract.

Together, NNSA's M&O Contractors implement NNSA's all-encompassing Stockpile Stewardship Program managed by Defense Programs that includes operations associated with surveillance, assessment, maintenance, refurbishment, manufacture and dismantlement of the nuclear weapons stockpile as well as research, development and certification efforts.

Overall, the NNSA needs to carry out its mission within research, development, and manufacturing organizations that are integrated, efficient, and cost effective. Work must be aligned with requirements received from key customers in a manner that strives to retain the intellectual excellence and key infrastructure capabilities demanded by national interests.

2.3 Location of Performance

The term "National Security Campus" (NSC) as used herein includes several Government-owned or leased facilities, along with a variety of satellite operations. The primary facility is located in Kansas City, Missouri, and consists of a Government-leased nuclear weapon component production plant that manufactures electrical, electronic, mechanical, electro-mechanical, plastic, and metal components. Satellite operations include Government-owned or leased facilities located in Albuquerque, New Mexico, that provide support to other DOE organizations associated with nuclear weapons activities; and support operations at several training and communications sites.

The NSC in Kansas City, Missouri is situated on approximately 177 acres located at Botts Road and US150 highway. The facility is owned by the Planned Industrial Expansion Authority of Kansas City and leased for the NNSA by the General Services Administration (GSA) from Centerpoint Zimmer LLC. The Occupancy Agreement between the NNSA and the GSA is for twenty years. The NSC is comprised of four buildings; building 1 is an office building, buildings 2 and 3 are NNSA manufacturing buildings, and building 4 is the National Secure Manufacturing Center supporting Work for Others. As of May 2014 the Kansas City, Missouri, employment is approximately 2,484 people.

The old Kansas City, Missouri, plant is situated on approximately 140 acres of the 300 acre Bannister Federal Complex. It is within the city limits in a highly developed area approximately 12 miles south of downtown Kansas City. The 3.1 million square foot plant shares the Bannister Federal Complex with numerous other federal agencies, and operates the site in conjunction with GSA. The plant is dominated by a large manufacturing building of 2.2 million gross square feet, and thirty-six other buildings with a total of approximately 0.9 million gross square feet.

NSC New Mexico (also referred to as Kirtland Operations (KO)), located in Albuquerque, New Mexico, are principally located in the vicinity of the Albuquerque International Sunport Airport, adjacent to the Kirtland Air Force Base (KAFB). This facility, consists of five (5) leased commercial closely clustered buildings totaling approximately 121,000 gross square feet. These buildings are the Craddock facility (buildings A,B, and C) at approximately 81,000 gross square feet, the Alamo building at approximately 28,000 gross square feet, and the Air Park building at approximately 12,000 gross square feet. Additionally, KO provides support to the Office of Secure

Transportation (OST) from an approximately 6,000 gross square feet facility located on KAFB and operated by OST, and to the Office of Emergency Operations (NA-40) from an approximately 14,000 gross square feet facility located on KAFB and operated by NA-40. As of June 5, 2014, the KO employment was approximately 200 people.

3.0 SCOPE

This Contract is comprehensive with an objective to perform all necessary operational, coordination, and management functions at the NSC and Satellites required to support NNSA and broader national security missions assigned to these facilities. This includes but is not limited to all ongoing missions and functions, as well as those that may be assigned during the term of the Contract. It further includes all infrastructure management and maintenance; information technology; human resource management including critical skills recruitment and retention; environmental management; health, safety and security systems; and purchasing, asset management and other administrative systems.

The Contractor shall be fully responsible and accountable for the safe and secure accomplishment of all work, whether performed by its own personnel or team members, including subcontractors. The Contractor shall be responsible for planning and coordinating production schedules; integrating, managing and executing the programs; supporting and executing large and small projects; and completing operations and other activities as described in this Statement of Work.

3.1 Mission

The Contractor shall safely and securely complete all mission responsibilities and improve performance in the completion of national security missions for non-nuclear production operations and all other national security missions, as applicable. NNSA has a National Work Breakdown Structure (NWBS) that is discussed further in Section J, Appendix F, National Work Breakdown Structure. For this Contract, the general work structure and functional activities of the site is defined in Section J, Appendix A, Chapter II, Work Scope Structure.

The scope of operations at the NSC includes manufacturing and/or procuring a multitude of nonnuclear electrical, electronic, electro-mechanical, mechanical, plastic, and metal components for nuclear weapons. These manufacturing and/or procurement operations are reflected in approximately 5,700 major active part numbers and 1,000 ship items, requiring 120 major technologies/processes, supporting 42 product lines, and approximately 300 suppliers. The NSC Contractor provides and operates a production management system to control and level-load the output of multiple manufacturing processes, considering an average of 8,000 weapon packages are shipped monthly.

At a minimum the Contractor shall:

- (i) Ensure the full set of manufacturing and evaluation operations are performed safely, efficiently and timely for active production technologies;
- (ii) Implement diagnostic techniques that will provide high quality data on the safety, security and reliability of the nuclear weapons components manufactured and/or procured through the NSC;

- (iii) Effectively use advanced design and manufacturing technologies and systems to design and produce products on short cycle times, with quality that approaches zero defects;
- (iv) Effectively support qualification and requalification activities for the manufacture of electrical, electronic, electro-mechanical, mechanical, plastic, and metal components and hardware to support the NSE's response to stockpile issues; and
- (v) Disposition planning, preparation and execution are performed within scope and schedule. Cost of disposition is to be minimized to protect Readiness in Technical Base and Facilities (RTBF) budgets. Work is to be accelerated to the extent possible to minimize out-year RTBF budgets.

In order to achieve the above results, the Contractor is expected to move to a higher level of performance throughout the term of the Contract by making the following process enhancements:

- Demonstrate a culture of continuous improvement for plant disciplines (such as cross-functional skill development, flexibility in job classifications, process-based manufacturing, outsourcing of appropriate products, quality, scheduling for continuous output, cost controls) and the associated metrics to demonstrate performance,
- Improve integration, partnering, and support among the NSE Contractors to promote early on-site problem solving and assist in NSE site issues, consolidation of business elements, and cost efficiencies,
- Develop and deploy effective strategic planning for the mission in the environment of changing budgets and technical and regulatory requirements,
- Assure effective human resource management and the availability of critical skills and capabilities to ensure operations are performed timely and efficiently, and
- Ensure that the infrastructure and facilities are operationally safe, secure, compliant, and that an acceptable defined level of readiness is sustained at all facilities.

Operational excellence is a desired underlying philosophy and mindset expected for the NSC. This incorporates the principle that compliance with regulations and standards shall be accomplished while performing NSC missions on time, at a reasonable cost, while protecting human health and the environment, and conserving the Government's assets. Operational excellence shall include a focus on the requisite rigor and discipline in all aspects of Contractor activities and, in particular, holding management and staff accountable. To achieve this operational excellence, it is essential that operations at the NSC be performed in a manner that meets DOE and other regulatory objectives. Therefore, a disciplined, effective and efficient management system to meet and exceed current industry performance in manufacturing operations is a significant objective of this Contract.

3.2 RESERVED

3.3 Scope and Financial Management

The Contractor shall support the DOE/NNSA Planning, Programming, Budgeting and Evaluation (PPBE) process. In supporting PPBE, the Contractor shall provide financial data for Government systems, such as:

- Standard Accounting and Reporting System (STARS)
 - STARS information is provided under the Institutional Cost Reporting Categories
- iMANAGE
- Enterprise Portfolio Analysis Tool (EPAT)
- Facilities Information Management System (FIMS)

The Contractor shall maintain financial cost reporting systems to provide detailed cost reports for cost, scope, and schedule for direct and indirect costs for all work performed under this Contract. The cost reports shall include labor costs, leave/hours not worked, staff augmentation, fringe, pension, legacy, materials, services-subcontractors, direct service centers, other expenses, capital, labor category, and full-time equivalent (FTE) resource usage for all direct and indirect costs and use cost benefit analyses to determine the appropriate level of support functions and risks. The Contractor shall provide NNSA transparency into those financial cost reporting systems and shall provide routine reports to allow NNSA visibility into program and cost management supporting reports to external sources (see Section J, Appendix L, Program Management and Cost Reports). The Contractor's financial cost reporting systems shall support the DOE STARS, iMANAGE, EPAT and support systems, such as FIMS, as well as other Government systems as they are developed and implemented.

The NNSA will provide the initial cost information, FTE data and scope framework on the effective date of the Contract. The Contractor shall develop a baseline for all Contractor direct programs and indirect support costs in accordance with DOE institutional cost reporting categories. The baseline shall include cost, scope of work, and schedule with a change control process. Baselines will be used for implementing the cost reduction features under this Contract. The baseline will be reviewed and approved annually by the Contracting Officer.

The Contractor shall have in place tools to: 1) manage mission and indirect changes in scope, cost, and schedule; 2) compare actual costs of work performed (ACWP) to budgeted costs of work performed (BCWP); 3) accurately forecast estimated costs to complete (ETC) and estimated total costs at completion (EAC); and 4) document deviations from the baselines described above in this paragraph and, on a timely basis, notify the Contracting Officer of such changes. The Contractor shall not make retroactive changes to records pertaining to work performed that will change previously-reported costs, except for correction of errors and routine accounting adjustments and shall not make retroactive changes for funding fluctuations or revisions in EAC.

3.4 Enterprise Success

The Contractor shall actively identify and participate with NNSA, and other NNSA M&O Contractors, to evaluate, plan, develop and implement strategic initiative activities that optimize mission and business operations across the NSE. The goal of these initiatives is to increase the efficiency and cost effectiveness from a business and mission perspective.

The Contractor shall lead and/or participate in strategic business and management initiatives that result in:

- Reduced operational costs enterprise-wide;
- More consistent work practices and operational processes;
- Better pricing, better products, more timely delivery;
- Reduced administrative costs and lead times for both the Contractor and the DOE/NNSA;
- Greater standardization and interchangeability across the NSE; and
- Increased awards to small business entities.

4.0 ADMINISTRATIVE AND TECHNICAL REQUIREMENTS

4.1 Integrated Safety Management (ISM), Integrated Safeguards and Security Management (ISSM), Environmental Management System (EMS), and Quality Assurance Systems (QAS)

The Contractor shall ensure that the principles of ISM, ISSM, EMS, and QAS are integrated into its operations and that its Contractor Assurance System (CAS) reflects Contractor integrated performance related to these systems.

4.2 Work Authorization (WA) System

Specific work requirements under this Contract will be established annually and updated as needed by the Contracting Officer in accordance with DOE Order 412.2 entitled "Work Authorization System" and the Contract's Section I Clause entitled "DEAR 970.5211-1, Work Authorization."

4.3 Information Technology (IT)

The Contractor shall support NNSA's efforts to optimize the efficiency of the NSE by consolidating IT infrastructure/services and eliminate redundant systems, to increase efficiency through mobility and cloud computing, and to improve business processes to better integrate across sites. To accomplish these goals, the Contractor shall develop a single, integrated "to-be" vision that uses the best available technologies and management practices from both Government and commercial sources to improve and achieve performance excellence, including fiscal efficiency. Desktop and back-office computing capabilities shall be compatible with those used by NNSA. Back-office functions shall include, but not be limited to, payroll, finance, project management, and human resources.

All deliverables that involve information technology that use internet protocol (products, services, software, etc.) shall comply with Internet Protocol version 6 (IPv6) standards, the Homeland Security Presidential Directive-12 (HSPD-12), and interoperate with both IPv6 and IPV4 systems and products. If the Contractor plans to offer a deliverable that involve IT that is not initially compliant, the Contractor shall (1) obtain Contracting Officer's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 and HSPD-12 compatibility for all application and product features, and (3) have IPv6 technical support for fielded product management, development and implementation available.

The Contractor, prior to using any Contractor-owned software and systems where reimbursement is expected, shall obtain the Contracting Officer's approval. Per the Section I clause DEAR 970.5227-2 Rights in Data - Technology Transfer (Dec 2000) Alternate I (Dec 2000) (NNSA Class Deviation Oct 2011), the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any Contractor-owned software and systems brought in and used. Said license shall be limited to the continued non-nuclear production work by successor Contractors.

4.4 Governance

Governance is the system of management and controls exercised in the stewardship of the organization. The governance system shall be consistent with NNSA governance documents (NAP-21 included in Section J, Appendix K, List of Applicable Directives). Contractors must self-govern and deliver mission results in a safe and secure manner. The Contractor shall implement governance through a collaborative partnership with NNSA to form the self-governance framework by which the mission is accomplished in an effective and efficient manner. The governance framework invokes trust and confidence between parties, defines expectations and authorities and verifies performance by using objectives, requirements, assessments, metrics and rewards. The Contractor will focus on NNSA transformation activities that maximize the ability to complete the mission in a way that ensures effective and efficient stewardship of the taxpayers' money. The Contractor shall streamline operations and reduce costs to maximize mission accomplishment through a common understanding of expectations and performance accountability, supported by a strong Contractor Assurance System (CAS). The Contractor shall have a CAS as a subordinate and supporting feature of Governance as described in 4.4.1 below.

4.4.1 Contractor Assurance System: The Contractor shall have a Contractor designed and used system to manage performance consistent with Contract requirements. The CAS shall be a primary tool used by Contractor management to measure and improve performance, ensure that mission objectives and Contract requirements are met; ensure that workers, the public and the environment are protected; and ensure that operations, facilities, and business systems are efficiently and effectively operated and maintained. An effective CAS integrates Contractor management, supports corporate parent governance and facilitates Government oversight systems as described in NAP-21. NNSA oversight shall not be relied upon by the Contractor as the primary feedback in assessing its performance. The Contractor is fully accountable for performing its own assessment of these areas.

4.4.2 Standards and Directives Reform: The Contractor shall submit a plan within 180 days after start of Base Term that identifies standards (e.g., ISO 9001, 14001, 18001, or other international or industry standards) to be used to replace other DOE requirements and provide the ability for the Contractor to operate with industry best practices. The plan shall describe how quickly the Contractor will achieve ISO certifications or other recommended standards but commit to completion no later than by the end of the second year of the Base Term. In addition, the Contractor, as part of its governance, shall continuously evaluate and examine DOE directives, orders, and requirements to propose needed exemptions or modifications to allow the Contractor to operate in the most effective and efficient manner and to assist in delivering cost savings to the Government.

4.4.3 Parent Organization(s)

- (i) The Contractor is encouraged to identify opportunities for the use of parent corporate systems and corporate home and branch office personnel for site operations for the purposes of monitoring plant performance, assisting the plant in meeting its mission and operational requirements, streamlining the Contractor's administrative and business systems, improving performance, and adapting private sector expertise to plant issues.
- (ii) The term "systems" means any discrete process, procedure, program, document or instrument where cost of use under this contract can be identified and quantified to the parent corporation.
- (iii) The Contractor, prior to using any parent corporate systems or home and branch office personnel where reimbursement is expected, shall submit a plan to the Contracting Officer for review and approval. In reviewing the plan, the Contracting Officer will consider the extent to which each separate element of the Plan is more efficient in meeting mission and operational requirements; represents an overall cost savings to the Government; brings value-added expertise; assists the monitoring of performance; and whether data is readily transferable to a successor Contractor.
- (iv) Per the Section I clause DEAR 970.5227-2 Rights in Data-Technology Transfer (Dec 2000) Alternate I (Dec 2000) (NNSA Class Deviation Oct 2011), the Contractor hereby grants the Government an irrevocable, nonexclusive, paid-up license, by or for the Government, in any Contractor-owned software and systems brought in and used in the performance of this Contract. Said license shall be limited to the continued operations of the National Security Campus by successor Contractors.
- (v) The parent organization(s) shall establish an oversight entity, independent and autonomous from National Security Campus management, that shall ensure successful contract performance and that shall identify opportunities for the parent organization(s) to engage with National Security Campus management to address National Security Campus performance issues. The parent organization shall discuss oversight mechanism results and initiatives with senior NNSA leadership each quarter.
- (vi) The parent organization(s) shall also establish an audit entity (e.g., audit committee), independent and autonomous from National Security Campus management, that shall perform financial reporting, risk management, internal control, ethics, compliance with laws and regulations and the National Security Campus code of conduct, and the internal audit and external audit and review processes. The audit entity shall be established consistent with best practices identified by the Institute of Internal Auditors (IIA) and The Sarbanes Oxley Act of 2002, Section 301.
- (vii) The audit entity shall provide the Contracting Officer with annual reports of its activities. On an annual basis the audit entity shall brief the Contracting Officer, or other delegate, as to its perspective on the:

- (1) Health of the Contractor's control environment;
 - (2) Effectiveness of corrective action plans resulting from audit and review findings;
 - (3) Significant financial and operational risk facing the organization; and
 - (4) Adequacy of the Contractor's internal audit activity and staffing.
- (ix) Parent organization(s) costs are "Home Office Expenses" as addressed in DEAR 970.3102-3-70, *Home Office Expenses*. Home Office Expenses, whether direct or indirect, are unallowable, unless otherwise specifically provided for in the Contract or specifically agreed to in writing by the Contracting Officer.

4.4.4 Award Fee Plan: The Contractor shall participate in the formulation of Performance Evaluation Plans (PEP) that covers a defined period of time. The PEP shall include performance objectives, goals, and measures.

4.4.5 Performance Metrics: The Contractor shall propose a list of performance metrics that provide Contractor and NNSA management an overall assessment of the "health of the operation" quickly and accurately. Once established, the metrics shall be part of the CAS and be provided with transparency to aid in the identification and understanding of significant performance issues.

4.5 Contractor Human Resources

The Contractor shall have the flexibility to restructure the workforce and make changes to employee benefits throughout the term of the Contract, as may be permitted by this Contract and applicable law, to maximize efficiencies. The Contractor shall be responsible for identification and maintenance of critical skills and for the employment of all professional, technical, skilled, and other personnel engaged and to be engaged by the Contractor in the work hereunder, and for the training of personnel, including apprentice programs. Persons employed by the Contractor or its subcontractors or consultants shall not be deemed employees of the Government. The Contractor shall follow the Human Resources (HR) requirements pertaining to workforce transition and management in accordance with Section J, Appendix A, Chapter III, Human Resources.

4.6 Environmental Permits and Applications

In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor is responsible for signing environmental permits and applications as "operator or co-operator" at the sites.

- (i) If bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by NNSA to be excessive or unreasonable, NNSA shall provide the regulatory agency with an acceptable form of financial responsibility.
- (ii) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this Contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to clauses of this Contract. The Contractor shall notify the Contracting Officer promptly when it receives service from the regulators

of NOV/NOAVs and fines and penalties. Nothing stated above shall affect the Contractor's right to challenge or contest the applicability or validity of such NOV/NOAVs and fines and penalties.

- (iii) In the event of termination or expiration of this Contract, NNSA will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.
- (iv) When providing NNSA with permits and applications that are to be signed or co-signed by NNSA, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to NNSA that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.

4.7 RESERVED

4.8 Interfaces with Other Site Users

Within the NSC locations, there are multiple Contractors responsible for a variety of broad-based programs. Within 90 calendar days after the start of the transition period, the Contractor shall submit, for NNSA approval, an Interface Management Plan (IMP) for the affected sites to identify and manage site interfaces/services between DOE, NNSA, DOE/NNSA Contractors, and tenant entities engaged in onsite activities. The IMP should identify any costs related to other site users. For the sites, services that require interface agreements shall be provided in accordance with existing or newly developed memoranda of understanding or other appropriate agreements. The Contractor will provide input to the Kansas City Field Office regarding effective support toward common site security and operational objectives. The Government will not consider such input if one contractor has any potential organizational conflict of interest with the other contractor.

4.9 Privacy Act System of Records

The Contractor shall design, develop, and maintain a system of records on individuals to accomplish an agency function in accordance with the Contract's Section I Clause entitled "FAR 52.224-2, Privacy Act." The applicable systems of records are available on the Federal Register. A list of applicable records will be finalized after contract award.

CHAPTER II. Work Scope Structure

1.0 INTRODUCTION

Specific work requirements under this Contract will be established annually by the Contracting Officer in accordance with the Chapter I, Section 4.2 above entitled "Work Authorization System." The Contracting Officer will issue Work Authorizations for each major work area to be accomplished in a given year. These Work Authorizations will conform to the Scope of Work of this Contract and further affect the General Requirements specified in this section.

2.0 GENERAL REQUIREMENTS

2.1 Defense Programs Strategic Planning Process

The Contractor shall contribute to the development of the DOE's Office of Defense Programs (DP) strategic planning process and the Contractor shall execute those plans. The goal of the DP planning process is to integrate programmatic work to maximize scientific and technical work accomplishment, while minimizing duplication between programs and sites and while providing for major investments in facilities within essentially fixed budgets. Work is defined in three major categories:

- **Directed Stockpile Work** is activity that supports ongoing stockpile maintenance and refurbishment work as well as the scientific understanding and engineering development capabilities necessary for the refurbishment and certification of the stockpile to support Stockpile Life Extension Programs.
- **Campaigns** are focused efforts involving the weapons plants, the three weapons laboratories, and the Nevada Test Site (NTS), to address critical capabilities needed to achieve key future program objectives. Campaigns are technically challenging, multi-function efforts that have definitive milestones and specific work plans. The NSC is a major participant in the Enhanced Surveillance, the Advanced Design and Production Technologies, and the Nonnuclear Readiness campaigns.
- **Readiness in Technical Base and Facilities** are those scientific and technical activities required to ensure that the infrastructure and facilities are operationally safe, secure, compliant, and that an acceptable defined level of readiness is sustained at all facilities.

2.2 Technology and Business Integration

The Contractor shall use available technology and management practices from both government and commercial sources to improve and achieve excellence. The DOE is continuously looking for opportunities to optimize the efficiency of the site and the collective accomplishment of the weapons production mission through integration of multiple site activities.

The Contractor shall propose and participate with other DOE Contractors and other Federal Contractors and agencies to support these efficiencies. If a stockpile stewardship function were centralized at a single site, the Government would provide these centralized materials and services to the other sites. Therefore, the DOE reserves the right to reassign missions, both core and non-core responsibilities, when it is in the best interest of the Government, and requires the Contractor to propose and support such initiatives.

The Contractor shall provide nonnuclear materials and components for the six production sites of the NSE. The Contractor shall work with the six production sites to ensure cost-effective products are delivered on time to meet National Security needs. The Contractor shall integrate supplier management and quality to include: pre-qualification, manufacturing process evaluation, field inspection and source acceptance, performance tracking, and corrective action/problem resolution.

The NSC is designated as the lead site for the Supply Chain Management Center (SCMC). In this role, the Contractor shall work with NNSA to integrate strategic sourcing for contractor procurement spending across NNSA M&O sites. In addition, the Contractor shall support the effort to implement SCMC tools and systems at DOE M&O sites.

The Contractor shall provide subcontract administration for the NSE for the Roof Asset Management Program (RAMP). In this integration role the Contractor will coordinate with the other participating NSE sites to ensure efficient and effective management of the program. The Contractor will also work with NNSA to expand applicability of the RAMP to DOE sites beyond the NSE as directed by the Contracting Officer.

The Contractor shall provide the management expertise and such other services as may be necessary to accomplish the efficient operation of the facilities at the NSC. The Contractor shall maintain national security mission competency and capability.

The KCNSC is designated as the lead site for the Small Business Program Resource Center (SBPRC). In this role, the Contractor shall work with NNSA to institutionalize an enterprise partnership among NNSA M&O sites and each one's small business programs. The Contractor shall create and support the SBMC mission with a focus on collaborative infrastructure, process improvements, small business policy/issue resolution and improvement of the goal establishment process.

2.3 Plant Directed Research, Development and Demonstration (PDRD) Program

The Contractor shall conduct a DOE approved Plant Directed Research, Development and Demonstration (PDRD) Program that supports science-based manufacturing related to the NNSA weapons mission, and encourages advanced research, development, and demonstration work to enhance the science and technology capabilities and core competencies required to fulfill the mission of the plant.

3.0 DIRECTED STOCKPILE WORK (DSW)

Directed Stockpile Work includes weapons and production support programs. These programs are performed to achieve stockpile evaluation, stockpile maintenance, and nuclear weapons assembly and disassembly objectives in accordance with DOE/NNSA requirements. The Contractor shall provide the following:

3.1 Weapons Programs

Provide management of the manufacture, evaluation and refurbishment of nuclear weapon components as follows:

- Procure and manufacture nonnuclear electrical, electronic, electro-mechanical, mechanical, plastic, and metal components for nuclear weapons in support of the DOE Stockpile Life Extension Programs, Limited Life Component Exchanges, and the stockpile evaluation program;
- Manage the NSE Integrated Production Scheduling System;
- Store nonnuclear components and hardware for nuclear weapons;
- Refurbish, repair and modify nonnuclear components and hardware for nuclear weapons;
- Disassemble and dispose of nonnuclear nuclear weapons components and hardware no longer required in the military stockpile;
- Maintain production capabilities for components and hardware not in the active stockpile;
- Manage a weapons quality assurance program to ensure that products meet design agency specifications, and certify in writing that weapons material submitted to DOE meets the requirements of applicable drawings and specifications;
- Perform research, development, testing and engineering work for the current and future NSC production missions to include development work in support of the weapon laboratories; and
- Support DOE production information systems.

3.2 Production Support Programs

- Provide management of operations and support activities to support the nuclear weapons program functions, and maintain core mission competencies and capabilities. These activities include Quality Supervision and Control, Production Supervision and Control, Production Engineering, and other mission support.
- Provide support to other Management and Operating Contractors in the collective accomplishment of the NSE production mission.
- Operate product testing laboratories focused on metallurgical/mechanical analysis, analytical chemistry, stockpile environment testing, and nondestructive evaluation.
- Operate and maintain a metrology laboratory; and develop, build, and maintain test equipment and gages for nonnuclear components.

4.0 CAMPAIGNS

4.1 Enhanced Surveillance Campaign

Implement advanced diagnostic techniques to be used by the Core Surveillance Program. These techniques will provide high quality data on the safety, security and reliability of the nuclear weapons stockpile.

4.2 Advanced Design and Production Technologies Campaign

Effectively use advanced design and manufacturing technologies and systems to design and produce products on short cycle times, with quality that approaches zero defects.

4.3 Nonnuclear Readiness Campaign

Provide tools, techniques and capacities to enable ambitious goals in cost, delivery time and product performance for Directed Stockpile Work. This campaign bridges the gap between technologies developed and demonstrated in campaigns for Advanced Design and Production Technologies, Enhanced Surveillance, and Enhanced Surety and the production availability/capacity required by Directed Stockpile Work.

4.4 Additional Campaigns

Perform work in areas of other Campaigns as they are identified and established along with their associated implementation plans.

5.0 READINESS IN TECHNICAL BASE AND FACILITIES

The Contractor shall provide management and administrative capabilities to maintain the NSC in the production readiness posture defined by DOE. Maintaining this state of readiness requires the Contractor to provide the following administrative and technical capabilities, and to provide an assessment of its Readiness to DOE each year.

5.1 General Management, Administration and Oversight

The Contractor shall be fully responsible and accountable for the safe, efficient and effective accomplishment of all work, whether performed by its own personnel or onsite subcontractors. The Contractor shall be responsible for planning, integrating, managing and executing the programs, projects, operations and other activities as described in this scope of work such that all functions are fully integrated and work is accomplished safely. The Contractor shall provide general management and program management functions that include: legal services, audit services, business systems management, human resources, property management, information resources, financial services, safeguards and security, public information and external communications activities, intergovernmental affairs, training, procurement, and industrial relations.

The Contractor shall establish clear ES&H priorities and manage activities in proactive ways that comply with human health, safety and environmental regulations; minimize wastes; and comply with applicable regulatory requirements and DOE directives.

The Contractor shall continuously analyze plant activities to identify commercial standards and practices that may be substituted for DOE Orders and Directives or for current plant business practices. The Contractor shall evaluate the benefits of incorporation of those standards and practices into facility operations, and develop proposals that define the transition timelines and metrics to be used in monitoring the success of those substitutions that are approved by DOE. The Contractor shall integrate the concepts of continuous improvement into all aspects of plant operations, for example, through the use of independent quality certification, safety and environmental management systems, total quality management, etc.

5.2 Waste Management

The Contractor shall manage and perform waste minimization activities and waste management activities to support plant operations.

5.3 Construction Programs and Capital Equipment

Construction programs include the design and construction of facilities necessary for the performance of NSC missions. The Contractor shall:

- Manage the design, construction, procurement/installation and startup of plant/equipment for capital facilities at the NSC. Modifications to the NSC will be handled consistent with the GSA Lease Agreement, Occupancy Agreement, and Delegations of Operations between NNSA and the GSA.
- Manage the building preparation for the disposition of the Bannister Federal Complex.
- Procure and install specific equipment items pursuant to capitalization criteria as defined by DOE.

It is expected that these projects and activities will be managed to the approved baseline, accomplished on or ahead of schedule, within budget, and will meet stated purpose or objective. During the term of the Contract, significant recapitalization may be required to meet production readiness objectives.

5.4 Asset Management

The Contractor shall perform custodial management of government-owned/leased facilities and equipment at the NSC and in doing so provide the following:

- Planning/Engineering/Support
The Contractor shall manage government-owned, leased, or controlled real property and attendant facilities under this Contract. Support the management of the NSC consistent with the GSA Lease Agreement, Occupancy Agreement, and Delegations of Operations. Specific activities include land and facility use planning, real property management, construction project management, utility management, maintenance management, configuration management, and support of the DOE in its disposition activities of the Bannister Federal Complex .
- Utility Operations
The Contractor shall manage utility operations that include support for all electric service, fuel oil, natural gas, potable water/sewer service, purified water, nitrogen, steam, chilled water, and non-potable hot water operations and utility services, whether contracted for by the Contractor or DOE. Included in Contractor's responsibilities is the operation of boiler/chiller plants, utility systems, procured utilities, utilities to other federal tenants, and managing the facility in an energy efficient manner per developed energy management plans. NSC operations will be managed by the Developer team and overseen by GSA with support from the Contractor. NSC New Mexico (NM) operations will be managed by lessor and overseen with support from the Contractor.

- Maintenance
The Contractor shall manage the Bannister maintenance activities, including facilities, custodial services, and energy repairs and/or projects, modifications, and special project services for facilities. The Contractor shall perform periodic condition assessments of the property to determine any deterioration or technical obsolescence that may threaten performance or safety. The NSC shall be managed consistent with the GSA Lease Agreement, Occupancy Agreement, and Delegations of Operations. The NSC/NM is to be managed consistent with the Contractor's lease agreements.

5.5 Site Services

The Contractor shall provide the following Site Services, comparable to best-in-industry practices:

- Environmental, Safety & Health Programs
Manage and integrate Environmental, Safety & Health (ES&H) programs for the purpose of ensuring that current and future plant operations do not negatively impact the environment, or the health and safety of the public, employees, and property. ES&H programs include air emissions; toxic materials; pesticides; storm-water, sanitary, and waste water discharges; safety and risk management; fire protection engineering; fire protection; industrial hygiene; and radiological protection.
- Security
Manage the NSC security program to protect classified information, nuclear weapon components and other government property. In addition, provide general industrial security services for general plant operations.
- Emergency Services
Manage onsite emergency management and emergency operations programs.

5.6 Other Site Services

The Contractor shall provide other site services that are incidental or related to this Statement of Work as directed and funded by DOE. These support services include onsite and offsite activities that are complementary to the NSC mission and enable DOE to accomplish its integrated nuclear weapons mission.

6.0 FUNCTIONAL SUPPORT

The Contractor shall provide:

6.1 General Support

General management and program management functions including: executive direction, human resources, financial support services, procurement, legal services, central administrative services, program and project controls, information outreach, information services, personal property management and other general support functions.

6.2 Mission Support

Mission support functions including environmental, safety and health, facilities management, maintenance, utilities, safeguards and security, logistics support, quality assurance, and laboratory/technical support.

In addition, provide services and support, as directed by NNSA, in the following areas:

- (i) Office of Secure Transportation facilities;
- (ii) DOE Central Scrap Management Office;
- (iii) DOE Business Center for Precious Metals Sales and Recovery;
- (iv) DOE Tri-Laboratory Office; and
- (v) Sandia-operated Weapons Evaluation Test Laboratory (WETL) operations.

6.3 Site Specific Support

Site specific support includes management and incentive fee administration, state and local taxes, and direction of a DOE-approved PDRD Program.

7.0 OTHER DOE SUPPORT**7.1 Secure Transportation Asset Support**

The Contractor shall provide production and technical support to the NNSA Office of Secure Transportation, including computer program design and development, numerical analysis, artificial intelligence applications, physics modeling, escort vehicle manufacturing, procurement and manufacture of tractors and trailers, vehicle maintenance and refurbishment, force on force simulation logistics, development of training programs, and maintenance of remote communications equipment.

7.2 Non-Proliferation, Treaty Related Issues and Verification

The Contractor shall support planning activities and shall execute assigned tasks related to worldwide non-proliferation programs, treaty-related activities, and DOE transparency and verification initiatives.

7.3 Environmental Restoration

The Contractor shall manage and perform environmental characterization, and "operations and maintenance" requirements of solid waste management units in accordance with established permits.

7.4 Supply Chain Management Center (SCMC) and Roof Asset Management Program (RAMP)

As mentioned in Chapter II.2.2 the Contractor shall work with NNSA and DOE to expand SCMC and RAMP services to DOE sites outside the NSE and EM sites as determined appropriate by the Contracting Officer.

7.5 Emergency Response

The Contractor shall provide production and service support to the NNSA Office of Emergency Response, including fieldable tools, training devices, depot storage,

equipment maintenance, device characterization, equipment procurement, life-cycle management, and field logistics.

8.0 OTHER NON-DOE SUPPORT

The Contractor shall manage and execute other assigned programs related to the NSC mission.

8.1 Work for Others (WFO) Program

The Contractor shall conduct a Work for Others (WFO) Program, as approved by the Contracting Officer. Some of the major WFO sponsors include DOD, Federal and State agencies, and academia. All such work shall be consistent with and complementary to the approved missions of NSC. Work shall be done in accordance with policies identified in the operating requirements for the NSC to maintain its weapons production capabilities.

8.2 Technology Partnerships Program

The Contractor shall support or establish Technology Partnerships for the transfer of manufacturing technology to American-owned businesses as required. This work takes advantage of partnerships with industry through cooperative research and development agreements, outreach and direct assistance programs, user agreements and facilities, and education and training. All projects must enhance the NSC's ability to meet mission requirements and improve the industrial competitiveness and national security of the United States.

CHAPTER III. Human Resources

1.0 DEFINITIONS

Incumbent Employees are the employees in good standing of Honeywell FM&T, LLC under Contract DE-NA0000622 as of the effective date of the Contract.

Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor upon the beginning of the Base Term at the NSC.

2.0 WORKFORCE TRANSITION

The following are requirements the Contractor shall carry out during the Transition Term prior to the beginning of the Base Term. After the effective date of the Contract, the Contractor may propose alternate due dates for the deliverables described in **2.1 Staffing Plan**, **2.2 Pay & Benefits**, and **2.3 Incumbent Employees Right of First Refusal**, and **2.4 Personnel Appendix (Section J, Appendix G)**. The Contracting Officer may approve such changes provided the deliverable dates make transition more effective and efficient for both parties.

2.1 Staffing Plan

No later than 30 calendar days after the effective date of the Contract the Contractor shall provide NNSA its plan for achieving the right workforce size and skills mix and an estimate of the number of employees at each site to whom it expects to make employment offers.

2.2 Pay & Benefits

Consistent with the requirements identified in **3.0 COMPENSATION** and **4.0 BENEFITS** below, the Contractor shall develop and submit for NNSA approval a pay and benefits program to cover non-bargaining unit Incumbent and non-bargaining unit Non-Incumbent Employees at NSC. It is expected that the benefits program will be developed using best practice and market based design concepts to achieve maximum efficiency and lower cost.

- 2.1.1** No later than 45 calendar days after the effective date of the Contract, the Contractor shall submit for NNSA approval all proposed benefit plans including but not limited to retirement plans, disability, healthcare, and paid time off. The submission shall include all plan documents that will describe benefits provided to employees at NSC including existing plans to which the Contractor becomes a sponsor at the beginning of the Base Term (with proposed changes to existing plans) as well as newly proposed plans.

The submission shall also include an "Employee Benefits Value Study" comparing the proposed benefits for non-bargaining unit Incumbent Employees and non-bargaining unit Non-Incumbent Employees using the NNSA Consolidated Employee Benefit Value Study methodologies and comparator companies, to be provided by the Contracting Officer, described in 4.1.5 below. Contracting Officer's approval of the Contractor's benefits

program will be contingent on the net benefit value not exceeding the comparator group by more than five percent.

- 2.1.2** No later than 90 calendar days after the effective date of the Contract, the Contractor shall submit a plan with a timeline for implementing a Compensation system that meets the criteria defined **3.0 COMPENSATION** below.

2.3 Incumbent Employees Right of First Refusal

The Contractor shall use the Transition Term to make hiring decisions. The Contractor shall give a right of first refusal of employment for every position identified by the Contractor as necessary for completing the requirements of the Contract (other than positions occupied by Key Personnel and managers who directly reported to them) under this Contract to Incumbent Employees as defined in **1.0 DEFINITIONS** who meet the qualifications for a particular position. The Contractor shall provide a written offer of employment that identifies the individual's pay and a summary of the benefits package that will be available to the individual. Incumbent Employees offered the same position shall be provided their same base salary/pay rate in existence (provided by the incumbent Contractor) at the time the offer is made. Incumbent Employees offered a different position than the position they are performing at the time the offer is made shall be provided pay commensurate with the offered position. Such offers shall be provided to employees as soon as possible, however, no later than 90 calendar days after the effective date of the Contract.

2.4 Personnel Appendix

The Personnel Appendix (Section J, Appendix G) sets forth certain Contractor Human Resources Management policies and related expenses that have cost implications under this Contract and are not covered explicitly in the Federal Acquisition Regulations (FAR) or Department of Energy Acquisition Regulations (DEAR) cost principles.

3.0 COMPENSATION

The Contractor shall recruit and retain a highly skilled, motivated, and experienced workforce in a cost effective manner capable of carrying out the technical and other requirements set forth elsewhere in this Statement of Work.

3.1 Total Compensation System

Consistent with the requirement in 2.2, Pay and Benefits, the Contractor shall establish a market based pay and benefit program. The objective is to provide a level of total compensation which, within available funds, attracts, motivates and retains a highly competent workforce and maintains a competitive position in the applicable labor markets.

The Contractor's total compensation system shall include the following components:

- (i) Philosophy and strategy for all pay delivery programs;
- (ii) System for establishing a job worth hierarchy;
- (iii) Method for relating internal job worth hierarchy to external market;
- (iv) System that includes a documented method and process for evaluating individual job performance and that bases individual and/or group compensation decisions on individual performance and Contractor performance as appropriate. In addition, the system must show the link to the annual evaluation of Contractor performance for individual compensation actions as appropriate;
- (v) Method for planning and monitoring the expenditure of funds;
- (vi) System for internal controls and self-assessment; and
- (vii) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be pro-rated according to the amount of time the employee spent performing work under this Contract.

The Contractor's Total Compensation System (e.g., to be set forth in Section J, Appendix G, Personnel Appendix), shall meet the tests of allowability in FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, be consistently applied, and be acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be approved by the Contracting Officer. Any changes to the Total Compensation System shall be submitted to the Contracting Officer 60 days prior to implementation.

Changes that impact current or future costs shall be approved by the Contracting Officer prior to implementation.

3.2 Cash Compensation

The Contractor shall submit the following to the Contracting Officer.

- 3.2.1** Any proposed major compensation program design changes prior to implementation.
- 3.2.2** An Annual Compensation Increase Plan (CIP). The CIP shall be provided to the Contracting Officer on October 1 annually and shall include the following components and data:
 - (i) Comparison of average pay to market average pay;
 - (ii) Information regarding surveys used for comparison;
 - (iii) Aging factors used for escalating survey data and supporting information;

- (iv) Projection of escalation in the market and supporting information;
- (v) Information to support proposed structure adjustments, if any;
- (vi) Analysis to support special adjustments;
- (vii) Funding requests and supporting analysis for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement;
 - (A) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.
 - (B) All pay actions granted under the CIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.
 - (C) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer.
 - (D) The Contracting Officer may unilaterally adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
 - (E) The Contractor is authorized to make minor shifts (up to 10%) in funds between payroll groups without prior Contracting Officer approval. The Contractor shall notify the Contracting Officer at the time funds are shifted.
- (viii) A discussion of the impact of proposed CIP on the site budget; and
- (ix) Discussion of relevant factors other than market average pay (e.g., turnover and offer-to-acceptance statistics, collective bargaining provisions, geographic considerations, total compensation).

The Contractor does not require CO approval for the CIP under the following circumstances: 1) the CIP is equal to or less than the salary increase projection (e.g. World at Work projection); and 2) NNSA does not notify the Contractor of any questions or concerns that may negate cost allowability. NNSA will provide notification within the two weeks following the Contractors submission (date will be identified in the annual NNSA CIP guidance).

The Contractor must submit the CIP for Contracting Officer approval under the following circumstances: 1) the CIP present exceeds the professionally recognized salary budget survey's salary increase projection (e.g. World at Work projection provided in the annual NNSA CIP guidance); 2) the

Contractor's position to market warrants less than the survey's salary increase projection such that application of the CIP at the full increase projection, would result in the overall position to be above market; and/or 3) the Contractor's overall position to market is above market.

- 3.2.3** When any Key Personnel Person is replaced, the compensation for the replacement shall be submitted for approval by the Contracting Officer. The top contractor official (i.e., Plant Manager or equivalent) salary actions including merit pay increases shall be submitted annually to the Contracting Officer for approval. The top contractor official's approved reimbursed base salary will serve as the maximum allowable salary reimbursement under the Contract. With these compensation actions, the Contractor shall provide supporting justification related to internal and external equity, individual performance and the Application for Contractor Compensation Approval Form (DOE 3220.5).
- 3.2.4** For any proposed establishment of an Incentive Compensation Plan (variable pay plan/pay-at-risk), documentation shall be provided to the Contracting Officer, no later than 60 days prior to proposed implementation. Such proposal must contain:
- (i) The design of the Incentive Compensation Plan, the funding methodology, and linkage to Contract performance measures;
 - (ii) Requirement for approval of Incentive Compensation Plan design changes by the Contracting Officer prior to implementation;
 - (iii) Requirement for an annual approval, prior to the performance period, of the total dollar amount of the pool, the eligible positions, and linkage to Contract performance goals;
 - (iv) Requirement for policy that provides a specific passover rate, i.e., percent of participants who will not receive an incentive;
 - (v) Requirement for an annual summary report on distributions made under an Incentive Compensation Plan; and
 - (vi) For any Executive Incentive Plans, a requirement for pay at risk.
- 3.2.5** Assignments of individuals outside of their normal duty station for which the NNSA/DOE will reimburse all or some of their compensation or other expenses shall be approved by the Contracting Officer prior to beginning the assignment. Requests shall be submitted 30 days prior to the desired start date. The Contractor shall submit a report of all such assignments, to include the total cost of each assignment, reason for assignment, location, duration, and cost-share arrangement to the Contracting Officer by January 30 of each year unless otherwise specified.
- 3.2.6** The Contractor shall submit a severance plan within 60 days of the effective date of the base term, which must include the notification period, pay-in-lieu policy,

and the severance schedule. Supporting documentation must include information regarding standards from nationally recognized sources and or comparator firms (including corporate parents).

Severance Pay is not payable to an employee under this Contract if the employee:

- (i) Voluntarily separates, resigns or retires from employment, except that in the event the Contractor conducts an NNSA approved voluntary separation program;
- (ii) Is offered employment with a successor/replacement Contractor;
- (iii) Is offered employment with a parent or affiliated company; and/or
- (iv) Is discharged for cause; or
- (v) Is currently in a Key Personnel position, or is discharged for performance

Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

3.3 Reports and Information: Compensation

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (i) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure, showing actual against approved amounts, no later than 30 days after Compensation Increase Plan expenditures; and
- (ii) Other compensation reports as requested by the Contracting Officer.

4.0 BENEFITS

4.1 Assumption of Existing Pension and Benefit Plans and Establishment of New Pension and/or Benefit Plans

The Contractor will be required to become a sponsor of the existing pension and other Post Retirement Benefit Plans (PRB), as applicable, with responsibility for management and administration of the plans, including maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances for Incumbent Employees accrued as of the date of the Base Term.

- 4.1.1 To the extent the Contractor seeks to establish new benefit plans or change existing benefit plans at the time of Contract transition, the Contractor shall provide justification to the Contracting Officer for all new benefit plans and

for all changes to existing benefit plans, plan design, or funding methodology. Changes that increase costs must also include cost impact, and the basis of determining cost. The Contractor must obtain approval from the Contracting Officer prior to implementation of benefit plans that are either new or first time for the site, would have a significant impact to employees, or which may set a precedent for the DOE/NNSA contractor system.

- 4.1.2 Cost reimbursement for pension and other benefit programs sponsored by the Contractor for non-bargaining and bargaining unit employees will be based on the "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described in 4.1.5.1 and 4.1.5.2 below.
- 4.1.3 The Contractor shall notify the Contracting Officer 60 days prior to terminating any benefit plan during the term of the Contract.
- 4.1.4 Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs 4.1.5.1 and 4.1.5.2 below. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan that will increase costs.
 - 4.1.4.1 The NNSA Consolidated Employee Benefits Value Study for non-bargaining unit employees, must be completed every two years or as directed by the Contracting Officer. An Employee Benefits Value Study is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to employees measured against the RV of benefit programs offered by comparator companies. The Contractor will use the comparator companies previously used in the last NNSA Consolidated Benefit Value Study. If any of the comparator companies no longer participate, the Contractor will recommend replacement companies for approval by the Contracting Officer. The Contractor shall include major non-statutory benefit plans offered by the Contractor, including qualified defined benefit (DB) and defined contribution (DC) retirement and capital accumulation plans and death, disability, health, and paid time off welfare benefit programs in the Value Study. To the extent that the value studies do not address postretirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the postretirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources.

An Employee Benefits Value Study for bargaining unit employees must be completed 6 months prior to the end of the collective bargaining agreement. The Benefits Value Study for bargaining unit employees must include at least 15 comparator companies approved by the Contracting Officer. The Value Study must include major non-statutory benefit plans offered by the Contractor, including qualified DB & DC retirement and capital accumulation plans and death,

disability, health, and paid time off welfare benefit programs. To the extent that the value study does not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources.

- 4.1.4.2 When the average net benefit value for all employees (including different tiers of benefits or groups of employees) exceeds the comparator group average by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer no later than 60 days after the Benefit Value Study is conducted.
- 4.1.4.3 An Employee Benefits Cost Study Comparison for non-bargaining and bargaining unit employees, must be completed annually. The cost Survey must use a professionally recognized measure approved by the Contracting Officer that analyzes the Contractor's employee benefits cost for employees on a per capita basis per full time equivalent employee and compares it with appropriate comparator data.
- 4.1.4.4 When the average of the Employee Benefits Cost Study total benefit per capita cost for each evaluated cohort exceeds the comparator group's per capita cost by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to the Contracting Officer no later than 60 days after the Benefits Cost Study is conducted.
- 4.1.4.5 Within two years of Contracting Officer approval of the Contractor's corrective action plan for non-bargaining employees, or upon the next collective bargaining period for bargaining unit employees, the Contractor shall attempt to align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.

4.2 Reports and Information: Benefits

The Contractor shall provide to the Contracting Officer:

- (i) Annually, the Compensation & Benefits Report (DOE F 3220.8).
- (ii) Quarterly, input requested data into DOE's iBenefits management system.

4.3 Workers' Compensation

- 4.3.1 The Contractor, unless workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new workers' compensation policies and all initial proposals for self-insurance (Contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- 4.3.2 Workers' compensation loss income benefit payments when supplemented by other programs (such as salary continuation, short term disability) are to be administered so that the total benefit payments from all sources shall not exceed 100% of employee's net pay.

4.4 Pension Plans

The Contractor will be required to become a sponsor of the existing pension plans and other Post Retirement Benefit Plans (PRB), as applicable, with responsibility for management and administration of the plans, including maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances for Incumbent Employees accrued as of the date of the Base Term.

- 4.4.1 Any pension plan maintained by the Contractor, for which NNSA reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under this Contract. Each Contractor pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer within 30 days from the completion of the audit. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.
- 4.4.2 The Contractor will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum required contribution under ERISA, as amended. If an additional pension contribution over and above the minimum required contribution would have the effect of avoiding benefit restrictions to defined benefit plan participants, the Contractor shall notify the Contracting Officer at least sixty (60) days prior to the date a payment would be due. Reimbursement above the annual ERISA required minimum contribution will require prior approval of the Contracting Officer. The Contracting Officer will take into consideration all pre-funding balances and funding standard carryover balances when evaluating whether to approve reimbursement above the minimum required contribution. The timing and amount of contributions to the plan will be made to satisfy the Section 430 of the Internal Revenue Code and Section 302 of ERISA and avoiding any penalties associated with contributions made after a required installment date.

4.4.3 The Contractor shall obtain the advance written approval of the Contracting Officer for any pension plan changes that are not required by law and which may increase costs or liabilities. The Contractor shall submit the proposal at least 60 days prior to the effective date of the proposed changes. In addition any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) shall be submitted to the Contracting Officer for prior approval with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, or cost per capita, if applicable. The analysis should also describe the potential impact on the plan's qualified status at present and the potential impact of the special programs on the qualified status through the duration of the Contract.

4.4.3.1 For proposed changes to DB and DC plans that are not mandated by law and which increase plan costs and/or liabilities, the Contractor shall provide the following to the Contracting Officer:

- (i) A clean copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout:
- (ii) An analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value and a cost study index;

4.4.3.2 Except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from Contractor legal counsel for purposes of compliance with all legal requirements applicable to private sector DB pension plans;

- (i) The Summary Plan Description; and
- (ii) Any such additional information as requested by the Contracting Officer.

4.4.3.3 When changes to DB and/or DC plans are required by law, or the changes do not increase costs or liabilities under the plan(s), the Contractor must provide a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout no later than 60 days before the new amendment is to take effect.

4.4.4 When operations at a designated NNSA facility are terminated and no further work is to occur under the prime Contract, the following apply.

4.4.4.1 No further benefits for service shall accrue.

- 4.4.4.2 The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the NNSA Contract.
- 4.4.4.3 The Contractor shall base its DB pension liabilities attributable to NNSA Contract work on the market value of annuities or dispose of such liabilities through a competitive purchase of annuities. The Contractor, as pension plan sponsor, must adhere to Department of Labor guidance set forth at 29 CFR 2509.95-1 regarding selection of an annuity provider for the purpose of benefit distributions from a DB pension plan.
- 4.4.4.4 Assets shall be determined using the "accrual-basis market value" on the date of termination of operations.
- 4.4.4.5 NNSA and the Contractor shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all NNSA assets assigned to a spun-off or terminating plan shall be placed in a high-yield, fixed-income portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's "AA."

4.4.5 Terminating Plans.

- 4.4.5.1 If the Contractor seeks to terminate any pension plan during the term of the Contract, the Contractor must obtain Contracting Officer approval for such termination. In addition, a Contractor proposal to terminate a pension plan must be provided to the Contracting Officer at least 60 days prior to the scheduled date of plan termination.
- 4.4.5.2 To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market, or through lump sum payouts. The Contractor, as pension plan sponsor, must adhere to Department of Labor guidance set forth at 29 CFR 2509.95-1 regarding selection of an annuity provider for the purpose of benefit distributions from a DB pension plan. The Contractor shall apply the assumptions and termination procedures of the Pension Benefit Guaranty Corporation.
- 4.4.5.3 Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
- 4.4.5.4 If ERISA or Internal Revenue Code (IRC) rules prevent a full transfer of excess NNSA reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to NNSA according to a schedule of payments to be negotiated by the parties.

- 4.4.5.5 On the same day as the Contractor notifies the IRS of the plan termination, all NNSA assets will be placed in a low-risk liability matching portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's "AA."
- 4.4.5.6 NNSA liability to a commingled pension plan shall not exceed that portion which corresponds to participants' service accrued for their work under an NNSA Contract. The NNSA shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- 4.4.5.7 After all liabilities of the plan are satisfied, the Contractor shall return to NNSA an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to NNSA. Such amount and such earnings shall be subject to NNSA audit. To affect the purposes of this paragraph, NNSA and the Contractor may stipulate to a schedule of payments.

4.4.6 Post Contract Responsibilities for Pension and Other Benefit Plans

- 4.4.6.1 If this Contract expires or terminates and NNSA has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired Contractor employees with respect to service, the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the plans consistent with direction from the Contracting Officer. If a comingled plan is involved, the Contractor shall:
 - (i) Spin off the NNSA portion of any comingled plan that provides benefits for employees working at the NNSA facility into a separate plan. The new plan shall provide benefits similar to those provided by the comingled plan and shall carry with it the NNSA assets on an accrual basis market value, including NNSA assets that have accrued in excess of NNSA liabilities.
 - (ii) Bargain in good faith with NNSA or the successor Contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. NNSA and the Contractor(s) shall establish an effective date of spinoff. On the same day as the Contractor notifies the IRS of the spinoff, all NNSA assets assigned to a spun-off plan shall be placed in a high-yield, fixed income portfolio until the successor trustee is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's "AA."

4.4.6.2 If this Contract expires or terminates and NNSA has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this paragraph), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination elsewhere in this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

- (i) Subject to paragraph 4.4.7.2(ii) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
- (ii) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

4.4.7 Reports and Information - Retirement Plans: For each DB and DC pension plan as applicable or portion of a pension plan for which NNSA reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the last day of the current pension plan year except for the Pension Management Plan which must be submitted by January 30 of each year.

- 4.4.7.1 The annual actuarial valuation report for each NNSA-reimbursed pension plan. When a pension plan is commingled, the Contractor shall submit separate reports for NNSA's portion and the plan total.
- 4.4.7.2 Copies of IRS Forms 5500 with Schedules for each NNSA-funded pension plan, no later than that submitted to the IRS.

4.4.7.3 Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

4.4.7.4 The annual Pension Management Plan as described below (**4.5 Pension Management Plan**) by January 30 of each year.

4.5 Pension Management Plan

4.5.1 The Contractor shall submit a plan for management and administration (Pension Management Plan) for each defined benefit pension plan (Plan) for which the Department has a continuing obligation to reimburse pension contributions that is consistent with the terms of this Contract.

4.5.2 The Pension Management Plan, shall be submitted annually on January 30, shall include:

4.5.2.1 The Contractor's best estimate of the contributions which it will be legally obligated to make to the Plan(s), beginning with the required contributions for the current fiscal year, based on the latest actuarial valuation, and continuing for the following four fiscal years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the Plan document(s). All contribution calculations should reflect payments made during DOE fiscal years, beginning October 1, through September 30, and the next succeeding six fiscal years. Please include a summary of the key actuarial assumptions used to determine the required contribution. All estimates must be based upon the most recently available asset information for the Plan. For example, for a Plan with a July 1 valuation date, project the July 1, value of assets for the current year to be used in the calculation from the actual January 1, value of assets from the same year.

4.5.2.2 If the actuarial valuation submitted pursuant to the annual Pension Management Plan update indicates that the sponsor of the Plan must impose benefit restrictions, the Contractor shall provide the following information:

- (i) The type of benefit restriction that will take place;
- (ii) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction;
- (iii) The amount of money that would need to be contributed to the Plan and the timing of such contribution to avoid legally required benefit restrictions; and

- (iv) A recommendation regarding whether the additional money should be contributed to the Plan and the rationale for the recommendation.

4.5.2.3 A detailed discussion of how the Contractor intends to manage the Plan(s) to maximize contribution predictability (i.e. forecasting accuracy) and to contain current and future costs, to include the rationale for selection of all Plan assumptions (i.e., actuarial experience studies) that determine the required contributions and which impact the level and predictability of required contributions. As part of the Contractor's plan to maximize contribution predictability, the Contractor may propose funding strategies other than ERISA minimums for NNSA's consideration and approval. The Contractor shall submit the following for NNSA to consider in deciding on the alternate funding strategy:

- (i) Identify whether the current year additional amount can be absorbed within the current operating budget;
- (ii) Discuss the integration of Plan's funding strategy and investment strategy taking into consideration the plan's demographic profile, liability duration, and impact of current year funding decisions on future year contribution requirements;
- (iii) Discuss the strategy for achieving fully funded status and protecting against erosion of the Plan's funded status;
- (iv) Discuss the strategy for specifically protecting any pension funding contributions reimbursed in excess of the minimum required contribution against the risk of significant loss;
- (v) Discuss whether the plan has a prefunding or funding standard carryover balance that could be used to improve the plan's AFTAP without requiring additional contributions. Provide a rationale regarding the recommended use of the available balance(s).

4.5.2.4 An assessment to evaluate the effectiveness of the Contractor's Plan(s) investment management/results. The assessment must include at a minimum: a review and analysis of Plan investment objectives and asset allocations; results of the most recent asset liability study and investment policy review; the strategies employed to achieve the Plan's investment objectives; and the methods used to monitor execution of those strategies and the achievement of the investment objectives. The Contractor shall also identify its plans, if any, for revising any aspect of its Pension Management Plan based on the results of the review.

Within thirty (30) days after the date of the submission, appropriate Contractor representatives will meet with the Contracting Officer and other DOE/NNSA representatives to discuss the Contractor's proposed Pension Management Plan. The Contractor must be prepared to discuss any differences between the prior fiscal year's estimated pension contributions for future fiscal years and the most recent projected pension contributions for future fiscal years and the rationale for any such discrepancies. In addition, discrepancies between the actual contributions made for the most recent fiscal year preceding the meeting and the projected contributions for that fiscal year and the rationale for any such discrepancies, and funding strategies for the Plan will be discussed.

5.0 LABOR RELATIONS

- 5.1 The Contractor shall comply with the National Labor Relations Act, DEAR Subpart 970.2201, and all applicable Federal and State labor laws.
- 5.2 The Contractor shall obtain the Contracting Officer or designee(s) approval on the costs associated with the Contractor's economic bargaining objectives, prior to negotiation of any collective bargaining agreement (CBA), extension or revision thereto. The Contractor shall submit proposed parameters at least 90 days prior to the expiration of the CBA. During the collective bargaining process, the Contractor shall obtain Contracting Officer approval before proposing or agreeing to any collective bargaining proposal that exceeds the economic parameters agreed to by the Contracting Officer before the commencement of bargaining. During the pendency of the CBA, the Contractor shall obtain approval of the Contracting Officer to changes in the CBA that would increase cost under the Contract or which could involve other items of special interest to the Government.
- 5.3 The Contractor shall provide an electronic copy of the bargaining agreement and the "Report of Settlement" to the Contracting Officer 30 days after formal ratification. The Contractor shall provide information requested by the Contracting Officer regarding ratified collective bargaining agreements to which the Contractor is a party. The Contractor shall enter information into the iBenefits system quarterly or upon Contracting Officer request.
- 5.4 The Contractor shall notify the Contracting Officer in a timely fashion of labor relations issues that may cause a significant impact to the workforce and/or impact the ability of the Contractor to perform the work under the Contract.
- 5.5 The Contractor shall immediately advise the Contracting Officer of the following:
 - 5.5.1 Possible strike situations or other actions affecting the continuity of operations including work stoppages and picketing;

- 5.5.2 Formal action by the National Labor Relations Board (NLRB) including but not limited to issuance of a complaint against the Contractor. Copies of complaints, settlement agreements, judgments and any other documents issued in connection with Contractor actions with respect to labor practices shall be provided to the Contracting Officer;
- 5.5.3 Recourse to procedures under the Labor-Management Relations Act of 1947 as amended or any other state law;
- 5.5.4 Any grievance scheduled for arbitration under any collective bargaining agreement that has the potential for significant economic or other impact as well as the decision of the arbitrator; and
- 5.5.5 Other significant issues that may involve review by other federal or state agencies.

6.0 WORKFORCE PLANNING

6.1 Workforce Planning - General

The Contractor shall annually analyze workforce requirements consistent with current mission requirements and future mission requirements identified to Contractor. The Contractor will describe in a written document how it will ensure it employs a sufficient number of employees who possess the appropriate skills to perform the current mission work and the anticipated, identified mission work. The description of how the Contractor will ensure it employs sufficient employees to perform the work may include a discussion of the following topics: future hiring needs in certain critical skill areas, recruitment and retention of individuals possessing certain critical skills and the impact of anticipated retirements/attrition. The document will also describe the amount and type of work the Contractor anticipates performing during the following calendar year pursuant to Work for Others. This analysis shall be provided to the Contractor no later than November 30th each year.

6.2 Reductions in Contractor Employment – Workforce Restructuring

6.2.1 Voluntary Separations

In order to minimize the number of involuntary separations and mitigate the impact on affected employees, the Contractor will consider in consultation with the Contracting Officer, the use of a Voluntary Separation Program (VSP) before consideration is given to conducting an Involuntary Separation Program (ISP) when workforce restructuring is necessary. The Contractor shall submit the VSP for approval by the Contracting Officer prior to implementation regardless of the number of employees involved. No reimbursement of costs associated with VSPs will be allowable if not approved by the Contracting Officer prior to implementation.

6.2.2 Involuntary Reductions in Contractor Employment

- 6.2.2.1 If the restructuring involves between 10-99 employees in a rolling twelve month period, the Contractor shall notify the Contracting Officer no later than 15 days in advance of the action.
- 6.2.2.2 For restructuring actions that involve separating between 50-99 employees, the Contractor shall prepare a specific workforce restructuring plan and submit the plan to the Contracting Officer for informational purposes. In addition, the Contractor shall perform an adverse impact analysis and provide a copy of the analysis to the NNSA Field Counsel for any restructuring actions that involve 50 or more employees within a 12 month period.

If the restructuring may involve the separation of 100 or more employees within a 12-month period, the Contractor shall submit a specific workforce restructuring plan for approval by the Contracting Officer, to enable compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 at a minimum, no later than 90 days in advance of the date the Contractor needs to begin notification to employees in accordance with the law and its attendant timeframes to effect the separations.

- 6.2.2.3 All notifications to the NNSA must contain pertinent information such as reasons, costs, dates, and numbers of impacted employees.
 - 6.2.2.4 The Contractor may submit a multi-year workforce restructuring plan for consideration and approval.
- 6.2.3 Any payment of benefits beyond those already approved in the Contract must be approved by the Administrator, NNSA, through the Contracting Officer.

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SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED

CLIN 0001 MANAGEMENT AND OPERATION OF THE NATIONAL SECURITY CAMPUS

In accordance with the terms and conditions of this Contract, the Contractor shall provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incidental to, the efficient, effective, and safe management and operation of the National Security Campus (NSC) (formerly known as the Kansas City Plant).

CLIN 0001A TRANSITION TERM (MODIFIED 0006)

The Transition Term will be four months, on a cost reimbursement (no fee) basis, with an estimated cost of \$233,076.

CLIN 0001B BASE TERM

The Base Term is five years of performance on a cost-plus-award-fee basis.

CLIN 0001C OPTION TERM 1

Option Term 1 is one year of performance on a cost-plus-award-fee basis.

CLIN 0001D OPTION TERM 2

Option Term 2 is one year of performance on a cost-plus-award-fee basis.

CLIN 0001E OPTION TERM 3

Option Term 3 is one year of performance on a cost-plus-award-fee basis.

CLIN 0001F OPTION TERM 4

Option Term 4 is one year of performance on a cost-plus-award-fee basis.

CLIN 0001G OPTION TERM 5

Option Term 5 is one year of performance on a cost-plus-award-fee basis.

**CLIN 0002 WORK FOR OTHERS AND OTHER REIMBURSABLE WORK
(MODIFIED 0017)**

“Reimbursable work” as used herein is the work performed by the Contractor that is not funded out of the Laboratory Table included in the President’s annual budget request for the National Security Campus. The Contractor shall, in accordance with Section J, Appendix A, Chapter II, paragraph 8.1 Work for Others (WFO) Program, and all other the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely perform all Work For Others and other reimbursable work efforts as directed by the Contracting Officer.

CLIN 0002A BASE TERM

The Base Term is five years of performance on a cost-plus-fixed-fee basis.

CLIN 0002B OPTION TERM 1

Option Term 1 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002C OPTION TERM 2

Option Term 2 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002D OPTION TERM 3

Option Term 3 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002E OPTION TERM 4

Option Term 4 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002F OPTION TERM 5

Option Term 5 is one year of performance on a cost-plus-fixed-fee basis.

B-2 CONTRACT TYPE AND VALUE (MODIFIED 0017)

- (a) This is a performance-based Management and Operating (M&O) Contract with cost-plus-award-fee provisions.
- (b) “DOE/NNSA work” as used herein is the work performed by the Contractor that is funded out of the Laboratory Table included in the President’s annual budget request for the National Security Campus. The estimated cost, award fee available, and award fee earned for CLIN 0001 (DOE and NNSA work) is set forth in Table 1 below:

Table 1 -- CLIN 0001 -- Management and Operation of NSC (MODIFIED 0017)

Contract Period	Estimated Cost	Base Fee	Award Fee Available	Award Fee Earned	Total Fee Earned (Base + Award Fee)
Transition Term	\$ 233,076	\$0			
Base Term (Year 1)	\$592,579,636	\$0	\$29,333,000	27,103,693	27,103,693
Base Term (Year 2)	\$605,912,677	\$0	\$29,993,000		
Base Term (Year 3)	\$619,242,756	\$0	\$30,653,000		
Base Term (Year 4)	\$632,618,400	\$0	\$31,315,000		
Base Term (Year 5)	\$646,662,528	\$0	\$32,010,000		
Option Term 1 (if exercised)	\$661,341,768	\$0	\$32,737,000		
Option Term 2 (if exercised)	\$676,354,226	\$0	\$33,480,000		
Option Term 3 (if exercised)	\$691,707,467	\$0	\$34,240,000		
Option Term 4 (if exercised)	\$707,409,226	\$0	\$35,017,000		
Option Term 5 (if exercised)	\$723,467,416	\$0	\$35,812,000		

- (c) The estimated cost and fixed fee for CLIN 0002 (Work for Others and Other Reimbursable Work) are set forth in Table 2 below. The estimated cost and the fixed fee for Work for Others and Other Reimbursable Work during the Base Term of the Contract and for each Option Term will be established by the NNSA prior to the commencement of the applicable fiscal year and may be revised and incorporated into the Table below through a modification. The Fixed-Fee for Work for Others and Other Reimbursable Work will be up to 4.7% of the estimated cost of all projects anticipated for the applicable fiscal year.

Table 2 CLIN 0002 -- Work for Others and Other reimbursable Work

Contract Period	Estimated Cost	Fixed Fee*	Estimated Cost + Fixed Fee
Base Term Year 1	\$297,455,000	\$13,980,000	\$311,435,000
Base Term Year 2	\$334,868,000	\$15,054,000	\$349,922,000
Base Term Year 3	\$393,000,000	\$16,900,000	\$409,900,000
Base Term Year 4	\$TBD	\$TBD	\$TBD
Base Term Year 5	\$TBD	\$TBD	\$TBD
Option Term 1 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 2 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 3 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 4 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 5 (if exercised)	\$TBD	\$TBD	\$TBD

B-3 CONTRACT FEE STRUCTURES

- (a) Fixed fees (Work for Others) and available award fee. The fixed fees (Work for Others) and available award fee for the Base Term and each Option Term, if exercised by DOE/NNSA, are shown in the tables in paragraph B-2, *Contract Type and Value*. The Contractor shall be eligible to earn award fee of \$153,304,000 during the Base Term (CLIN 0001B), subject to its performance under the annual Award Fee Plan. The award fee decision is a unilateral decision of the Fee Determining Official (FDO) based on the Contractor's performance rating under this Contract in accordance with the Award Fee Plan, and the terms and conditions of the Contract. The award fee earned is payable in accordance with the contract clause DEAR 970.5232-2, *Payments and Advances*.
- (b) Payment of Fixed Fee (Work for Others) and Provisional Payment of Award Fee
- (i) Fixed Fee: The fixed fee (Work for Others) for the Base Term of the Contract shall be paid quarterly at the rate of one-fourth (1/4) of the annual fixed fee payable for CLIN 0002. The final quarterly payment shall be adjusted to ensure that the fixed fee amount provided in Table 2 Clin 0002 is not exceeded. Such payment amounts are to be drawn down by the Contractor from the Contract's special financial institution account in quarterly installments on the last day of each quarter.

- (ii) Provisional Payment of Award Fee: The award fee is authorized for draw down by the Contractor from the Contract's special financial institution account as follows:
 - (A) In monthly provisional fee payments equivalent to 3% of the available award fee; or
 - (B) Upon completion of milestones or any other methodology as set forth in the Award Fee Plan and its supporting documentation; and
 - (C) The balance, if any, upon issuance of the Contracting Officer's notification in accordance with Section B, B-5, Performance Evaluation.
 - (D) If the provisional payments made above exceed the Award Fee earned or the Contractor fails to fully accomplish the objective/incentive for which it has received milestone completion or provisional payments, the Contracting Officer will determine if the Contractor is to refund all or part of the provisional fee it has received. Any refund made shall include interest. Interest will be paid at the published prime rate of the financial institution (depository) in which the special account is established or at the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), whichever is higher, which is applicable to the period in which any unearned payments were made. Interest paid resulting from this clause is an unallowable cost.
 - (E) The Contractor shall remit any balance due payable to the Government in accordance with directions to be provided by the Contracting Officer.
- (c) Unearned award fee will not be available for future performance periods.

B-4 KEY PERSONNEL REPLACEMENT

Unless approved in advance, in writing, by the Contracting Officer, should any Key Personnel be removed, replaced, or diverted by the Contractor for reasons under the Contractor's control (other than to maintain satisfactory standards of employee competency, conduct and integrity under the Contract's Section I clause entitled "DEAR 970.5203-3, Contractor's Organization"), within the first two years of the period of performance; or for a replacement Key Person within two years of being placed in the position, the Contractor shall forfeit two years of the DOE/NNSA reimbursable annual salary, bonuses and relocation costs as well as associated burdens, for that position for each occurrence.

B-5 PERFORMANCE EVALUATION

- (a) **Award Fee Plan.** An Award Fee Plan will be developed by NNSA for this Contract which will document strategic performance expectations and the process by which the Contractor's performance will be evaluated. The Parties will strive to reach mutual agreement on expected performance and will work together to establish the Award Fee Plan. In the event the parties cannot come to agreement, NNSA reserves the right to make the final decision and issue the Award Fee Plan unilaterally. The Award Fee Plan once finalized, whether bilaterally or unilaterally, will be incorporated into the Contract at Section J, Appendix B, by a formal contract modification. The Contracting Officer may revise the Plan, consistent with Section J, Appendix A, Statement of Work (SOW), during an evaluation period of performance and will incorporate any revisions through a contract modification. No changes will be made with less than 60 days remaining in the evaluation period.
- (b) **Contractor Evaluation Self-Assessment Report.** A periodic self-assessment may be prepared by the Contractor for consideration by the Government. If submitted, it shall be submitted no later than 7 calendar days after the end of an evaluation period.
- (c) **Schedule.** Within ten calendar days of the FDO final determination, the Contracting Officer will issue a modification to the Contract authorizing the payment of such fee.

B-6 OBLIGATION OF FUNDS (Modified to 0034)

Pursuant to this Section I clause entitled "DEAR 970.5232-4, *Obligation of Funds*," the total amount obligated by the Government with respect to this Contract is \$1,628,125,149.69 (Modified 0034)

B-7 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary to Section I clause DEAR 952.250-70, *Nuclear Hazards Indemnity Agreement*, the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which DOE/NNSA may legally spend for such purposes.

SECTION C: DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C-1 STATEMENT OF WORK

The work to be performed is set forth in Section J, Appendix A, *Statement of Work*.

SECTION D: PACKAGING AND MARKING

D-1 PACKAGING AND MARKING

Packaging and marking of items to be delivered shall be in accordance with work authorization requirements or other written direction of the Contracting Officer or the Contracting Officer's Representative (COR).

SECTION E: INSPECTION AND ACCEPTANCE

**E-1 FAR 52.246-3 INSPECTION OF SUPPLIES -- COST-REIMBURSEMENT
(MAY 2001)**

(a) *Definitions.* As used in this clause--

“Contractor’s managerial personnel” means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

- (1) All or substantially all of the Contractor’s business;
- (2) All or substantially all of the Contractor’s operation at a plant or separate location where the contract is being performed; or
- (3) A separate and complete major industrial operation connected with performing this contract.

“Supplies” includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

- (f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g)
 - (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may --
 - (i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;
 - (ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or
 - (iii) Terminate the contract for default.
 - (2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to --
 - (1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 - (2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

- (j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.
- (k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of Clause)

**E-2 FAR 52.246-5 INSPECTION OF SERVICES – COST REIMBURSEMENT
(APR 1984)**

- (a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may --
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may --
 - (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

(End of Clause)

E-3 FAR 52.246-9 INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of Clause)

E-4 INSPECTION AND ACCEPTANCE

Inspection of all activities and acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or any other duly authorized representative.

SECTION F: DELIVERIES OR PERFORMANCE

F-1 FAR 52.242-15 STOP-WORK ORDER (AUG 1989) ALTERNATE I (APR 1984)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F-2 STOP WORK IN EVENT OF IMMINENT DANGER

The Contractor shall immediately cease any activity that is imminently dangerous to the life or health of the workers, the public, or the environment. In the event of imminent danger, any Federal or Contractor employee is authorized to instruct the Contractor to stop work. The Contracting Officer must be contacted immediately after the event such that a written stop-work order can be issued in accordance with Section F clause FAR 52.242-15, *Stop-Work Order, Alternate I*. Employees of the Contractor shall be apprised of their right to stop work pursuant to this clause. The Contractor shall include this clause in all subcontracts to be performed at the sites.

F-3 PERIOD OF PERFORMANCE

The period of performance of this Contract shall expire five years after completion of the Transition Term, unless sooner reduced, terminated or extended in accordance with this Contract. The period of performance may be extended in increments, or portions thereof, for up to an additional five (5) years of performance. The Contract's maximum period of performance, including the Transition Term and Option Term(s), if exercised, shall not exceed ten (10) years and four months. The period of performance of this Contract consists of:

- (1) Transition Term: A period of four months beginning on the effective date of the Contract. During the Transition Term, the Contractor shall perform the activities and provide the documents identified in Section F, F-7, *Deliverables During Transition* and Section J, Appendix C, *Transition Plan*. The Contractor's responsibility for management and operation of the National Security Campus shall commence with the Base Term.
- (2) Base Term: A period of five years beginning after completion of the Transition Term.
- (3) Option Term(s): A period from one to five years beginning after completion of the Base Term, if the DOE/NNSA chooses to exercise one or more of the following options:

Option Term 1: If exercised, one year from the end of the Base Term;

Option Term 2: If exercised, one year from the end of Option Term 1;

Option Term 3: If exercised, one year from the end of Option Term 2;

Option Term 4: If exercised, one year from the end of Option Term 3;

Option Term 5: If exercised, one year from the end of Option Term 4;

F-4 PRINCIPAL PLACES OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations within the United States. The principal places of performance are the National Security Campus in Kansas City, Missouri and Albuquerque, New Mexico.

F-5 EVALUATION OF PERFORMANCE AND EXERCISE OF OPTION(S)

The decision to extend this Contract will be a unilateral decision made by DOE/NNSA. Exercise of any option shall be in accordance with Section I clause FAR 52.217-9, *Option to Extend the Term of the Contract*. At a minimum, the DOE/NNSA will consider the following in determining whether to extend the Contract:

- (1) The Contractor's overall performance, taking into consideration performance evaluations pursuant to the Award Fee Plan;
- (2) The considerations under DEAR 970.1706-1(b) for exercising options under M&O contracts.

F-6 DELIVERABLES

The primary deliverable under this Contract is the production of nonnuclear components for nuclear weapons to support NNSA Stockpile Stewardship and Management Program activities directed by the Office of Defense Programs. This Contract also requires the delivery of documents, plans, and reports for review and approval. Additional deliverables under this Contract are described in Section H, *Special Contract Clauses*; Section I, *Contract Clauses*; Section J, Appendix A, *Statement of Work*; Appendix K, *List of Applicable Directives and NNSA Policy Letters*; and Appendix G, *Personnel Appendix*.

F-7 DELIVERABLES DURING TRANSITION

In addition to the transition deliverables identified elsewhere in this Contract, the following deliverables shall be submitted during the Transition Term:

(a) Transition Plan

On the effective date of the Contract the Contractor shall provide, for approval by the Contracting Officer, a Transition Plan. The Transition Term is specified in paragraph F-3, *Period of Performance*. The Transition Plan is incorporated into Section J, Appendix C, *Transition Plan*.

(b) Transition Cost Estimate

- (1) On the effective date of the Contract the Contractor shall provide, for approval by the Contracting Officer, a Transition Cost Estimate. The

Transition Cost Estimate shall include the costs associated with the Transition Plan and the costs necessary for the Contractor to meet the transition requirements during the Transition Term. A detailed schedule for accomplishment of these tasks during the Transition Term shall also be provided to support the requested cost estimate.

- (2) The Contractor shall provide a cost summary for the Transition Plan that clearly identifies, by cost element, the portion of the cost proposal that pertains to each participant (if a teaming arrangement is proposed), including subcontractors. In addition, each participant and each subcontractor must provide separate exhibits, summary schedules, and supporting cost information in the same format and level of detail as required below. A transition fee is not allowable.
 - (i) Labor: Identify proposed transition labor hours and unburdened labor rates by labor category and or/specific individual, including Key Personnel. Explain the basis for the proposed labor hour and labor rate estimates.
 - (ii) Indirects: Identify the cost elements included in each indirect rate cost pool and allocation base. Explain the basis of estimate for each indirect cost rate proposed and the methods used to derive the proposed rates.

(c) Conflict of Interest Compliance and Management Plan

The Contractor shall submit a Conflict of Interest Compliance and Management Plan (Plan) to the Contracting Officer for approval within 60 days after the effective date of this Contract. The Plan shall address the Contractor's approach for adhering to Section I clause DEAR 952.209-72, *Organizational Conflicts of Interest, Alternate I*, and describe its procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The overall purpose of the Plan is to demonstrate how the Contractor will assure that its operations meet the highest standards of ethical conduct, and how its assistance and advice are impartial and objective.

SECTION G: CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS AND PROCEDURES (MODIFIED 0006)

- (a) The Patent Counsel for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses and technical data issues is identified below. Correspondence being sent to the DOE/NNSA Patent Counsel should be addressed to:

U.S. Department of Energy, National Nuclear Security Administration
NNSA Patent Counsel
Office of the General Counsel (NA-GC)
P.O. Box 5400
Albuquerque, NM, 87185-5400

- (b) The Contractor may use the Organizational Property Management Officer as a point of contact for guidance and assistance involving property requirements. The Contracting Officer shall be contacted for any matter that involves a change in any of the express terms and conditions of the Contract. Correspondence being sent to the Organizational Property Management Officer should be addressed to:

NNSA Albuquerque Complex
Organizational Property Management Officer (OPMO)
Personal Property Branch
Acquisition Policy and Oversight Division
P.O. Box 5400
Albuquerque, New Mexico 87185

- (c) Technical and Administrative Correspondence:

Technical and administrative correspondence concerning performance of this Contract shall be addressed to the responsible DOE/NNSA Contracting Officer's Representative (COR), with an information copy to the Contracting Officer.

- (d) Designation of Contracting Officer's Representative(s)

The COR's official delegation of authority will be provided by the Contracting Officer to the Contractor. This delegation will describe the COR's authorities in detail. However, it is emphasized that only the Contracting Officer has the authority to modify the terms of this Contract, therefore, in no event will any understanding, agreement, modification, change order, or other matter deviating from the terms of the basic Contract between the Contractor and any other person be effective or binding on the Government. When/If, in the opinion of the Contractor, an effort outside the existing scope of this Contract is requested, the Contractor shall promptly notify the Contracting Officer in writing, before

proceeding with the COR direction. No action shall be taken by the Contractor unless the Contracting Officer has issued a formal contractual change.

If an effort under this Contract requires that an Alternate COR perform duties in the absence of the responsible COR, all responsibilities and functions assigned to the COR shall be the responsibility of the Alternate COR acting on behalf of the COR.

(e) Contractual Correspondence/Matters

Correspondence involving contractual matters shall be addressed to the Administrative Contracting Officer (ACO), who is also primarily responsible for all contractual actions required to be taken by the Government under the terms of this Contract. The ACO may be contacted at

Contracting Officer
U.S. Department of Energy/NNSA
Kansas City Field Office
14520 Botts Rd.
Kansas City, MO 64147

(f) Marking

To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract number, as illustrated:

SUBJECT: Contract Number DE-NA0002839, (insert topic of correspondence after Contract Number)

G-2 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this Contract, a Contracting Officer is the only individual authorized, on behalf of the Government, to:

- (a) Accept nonconforming work;
- (b) Waive any requirement of this Contract; or
- (c) Modify any term or condition of this Contract.

G-3 CONTRACTOR CONTACT

The Contractor shall identify to the Contracting Officer the point of contact who has the authority and is responsible for managing, administering, and negotiating changes to the

terms and conditions of this Contract as well as executing contract modifications on behalf of the Contractor.

Name: Kaniah Konkoly-Thege
Position: General Counsel
Company: Honeywell Federal Manufacturing & Technologies, LLC
Address: 14520 Botts Road
Kansas City, MO 64147
Phone: (816) 488-7149
E-mail: kkonkolythege@kcp.com

G-4 PERFORMANCE GUARANTEE(S)

If the Contractor has organized a separate corporate entity to perform all work under this Contract, the Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, where more than one company is involved in a business relationship created for the purpose of performing under the resultant contract, shall guarantee performance as evidenced by the Performance Guarantee Agreement(s) incorporated in Section J, Appendix E, *Performance Guarantee Agreement(s)*. If the Contractor is a joint venture, limited liability company, or other similar entity, where more than one company is involved, the parent or all member organizations shall assume joint and severable liability for the performance of the Contract. In the event any of the signatories to the Performance Guarantee Agreement(s) enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

G-5 RECOGNITION OF PERFORMING ENTITY (MODIFIED 0006)

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this Contract was based.

The performing entity is Honeywell Federal Manufacturing & Technologies, LLC.

- (b) Accordingly, the Contractor and the Government agree that the Contractor shall take no action to replace the components of the entity named in paragraph (a) of this clause without the prior written approval of the Contracting Officer.

G-6 RESPONSIBLE CORPORATE OFFICIAL (MODIFIED 0017)

Notwithstanding G-4, *Performance Guarantee(s)*, the Government may contact, as necessary, the single responsible Corporate Official identified below, who is at a level above the senior Contractor official on-site and who is accountable for the performance of the Contractor. Should the responsible Corporate Official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: Carey Smith
Position: President, Honeywell Defense & Space
Company: Honeywell International Inc.
Address: 7000 Columbia Gateway Dr.
Columbia, MD 21046
Phone: (410) 294-2378
Email: Carey.Smith@Honeywell.com

G-7 INVOICING FOR TRANSITION COSTS

- (a) The Contractor shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS) for reimbursement for work performed under CLIN 0001A, *Contract Transition Term*. VIPERS allows vendors to check the payment status of any voucher submitted to the DOE. To obtain access to and use VIPERS, please visit the web page at <https://vipers.oro.doe.gov/>. The Contractor shall contact the Contracting Officer if the Contractor is unable to submit invoices electronically.
- (b) The Contractor shall invoice for work performed, as directed by the Contracting Officer (following the procedures at paragraph (a) of this clause).

G-8 (DELETED 0006)

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H-1 WORK SCOPE CHANGES

- (a) In accordance with Section I clause DEAR 970.5243-1, *Changes*, the Contracting Officer may identify any of the work contemplated by Section J, Appendix A, *Statement of Work*, of this Contract to be performed either by another contractor directly contracted by the DOE/NNSA or by Government employees. The Contractor shall fully cooperate with other such contractors and Government employees, carefully fit its own work to such other work as may be directed by the Contracting Officer, and provide reasonable support as required. The Contractor shall not commit or permit any act that will interfere with the performance of work.
- (b) For work identified for performance by another contractor directly contracted by the DOE/NNSA, the Government may designate the Contractor as the Technical Monitor for such contracts that are directly related to the scope of this Contract. The Contractor agrees to perform such monitoring duties as shall be further described in the designation for each such contract. No designation shall include, and the Contractor shall not perform any function determined to be inherently governmental including but not limited to the following duties:
 - (1) Award, modification, change, or termination of the contract.
 - (2) Receipt, processing or adjudication of any claims, invoices, or demands for payment of any form.

The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer's Representative (COR), any performance of a designated contract that may not be in compliance with its terms and conditions and is not authorized to take any other action regarding such noncompliance.
- (c) As appropriate, adjustments may be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals.

H-2 CONTINUATION OF PREDECESSOR CONTRACTOR'S OBLIGATIONS

Existing contractual agreements and regulatory obligations entered into under Contract DE-NA0000622 will continue during performance of this Contract. The Contractor shall continue to have responsibility and accountability under this Contract for all existing commercial and regulatory obligations under the predecessor Contract. The contractual agreements shall include, but not be limited to all:

- (1) Subcontracts and purchase orders;
- (2) Agreements with domestic and foreign research organizations;
- (3) Agreements with universities and colleges; and
- (4) Other similar agreements.

Additionally, unless otherwise stated in this Contract, management systems, plans, permits, procedures, and other agreements that exist on the effective date of the Contract will continue until the Contractor addresses the applicable requirements contained in this Contract. For changes that require DOE/NNSA approval, the Contractor shall not implement a change until it is formally approved by the Contracting Officer.

H-3 SMALL BUSINESS PARTICIPATION

The Small Business Subcontracting Plan is incorporated in Section J, Appendix I. The Contractor shall submit annual subcontracting goals 60 days prior to the beginning of each fiscal year during the term of this Contract, or by such other date as authorized in writing by the Contracting Officer.

H-4 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

The Representations, Certifications, and Other Statements of Offeror completed by the Contractor and dated 5/8/15, are hereby incorporated in this Contract by reference.

H-5 CONFLICT OF INTEREST COMPLIANCE AND MANAGEMENT PLAN

The Contractor and the Contractor's parent(s) and affiliate(s), if any, shall comply with the provisions of the approved Conflict of Interest Compliance and Management Plan (Plan) in the performance of the Contract and any deviations or amendments to the Plan shall require the express written approval, in advance, from the Contracting Officer. The Contractor shall submit to the Contracting Officer annual Organizational Conflict of Interest (OCI) Disclosure Update Statements beginning November 1st of each year after Contract award. Notwithstanding the annual disclosure requirement, any change in relevant facts since the last OCI Disclosure Update Statement shall be disclosed to the Contracting Officer pursuant to Section I clause DEAR 952.209-72, *Organizational Conflicts of Interest, Alternate I*, paragraph (c)(1), *Disclosure After Award*. Initial notification to the Contracting Officer shall be accomplished as soon as the facts are known with a full disclosure within 60 days of the initial notification, unless otherwise directed by the Contracting Officer.

H-6 LOBBYING RESTRICTION

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-7 IMPLEMENTATION OF SECTION I CLAUSES

- (a) For purposes of implementation of Paragraph (b)(2) of Section I clause FAR 52.208-8, *Required Sources For Helium And Helium Usage Data*, the Parties agree to the following:
 - (1) Contractor delivery of helium supplier and helium usage data to the Contracting Officer shall be considered met if the required data is entered into an appropriate database of helium deliveries;
 - (2) A copy of this data must be made available to the Contracting Officer upon request; and
 - (3) The Contractor shall provide a quarterly report of helium usage to the Contracting Officer in a format determined by the Contracting Officer.
- (b) For purposes of implementation of paragraph (b) of Section I clause DEAR 970.5204-2, *Laws, Regulations, and DOE Directives*, the Parties agree to the following:

The NNSA Supplemental Directive (SD) Manual 452.3-1, *Defense Programs Business Requirements and Processes Manual*, will incrementally and formally replace chapters and associated Technical Business Practices within the 56XB *Nuclear Weapon Development and Production Manual* using the Requirements Modernization and Integration (RMI) process, or equivalent process approved by the DOE/NNSA.

H-8 PREEXISTING CONDITIONS

- (a) Any liability, obligation, loss, damage, penalty, fine, or claim (including, without limitation, a claim involving strict or absolute liability), action, suit, cost, expense or disbursement which may be incurred, imposed, or asserted by any party and arising out of any act or failure to act which occurred before the date of Contract award, in conjunction with the management and operation of the National Security Campus in Kansas City (Kansas City Plant), shall be deemed incurred under Contract DE-NA0000622.
- (b) Notwithstanding the provisions of subparagraph (a) above, to the extent the acts or failure to act of the Contractor after date of Contract award, cause or add to any fine, or penalty, or remediation costs resulting from a condition in existence prior to date of Contract award, the Contractor shall be responsible in accordance with the terms and conditions of this Contract. The Contractor has the duty to inspect existing facilities and sites and timely identify to the Government those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this Contract or applicable law or regulation, and the responsibility to take corrective action, as directed by the Contracting Officer or as required elsewhere in this Contract.

- (c) The obligations of the Government under this clause are subject to Section I clause DEAR 970.5232-4, *Obligation of Funds*.

H-9 CONFERENCE COSTS

- (a) The Contractor shall follow the most current guidance issued by DOE/NNSA concerning reporting conference related activities and spending. The Contractor shall request, obtain approval, and report all conference activities through the Conference Management Reporting and Approval Tool on the DOE iPortal at <https://iportal.doe.gov>.
- (b) While a conference may be approved by DOE/NNSA based on estimated cost and attendance to ensure federal funds are used for purposes that are appropriate, cost effective, and important to the core mission, only the Contracting Officer has authority to determine if the costs incurred by the Contractor are reasonable, allowable, and allocable to the Contract.
- (c) The Contractor shall ensure conference activities are included in the Contractor's annual audit plan required by paragraph (i)(3) of Section I clause DEAR 970.5232-3, *Accounts, Records, and Inspections*, unless otherwise directed by the Contracting Officer.

H-10 FEDERAL FLEET MANAGEMENT SYSTEM

When the Contracting Officer has issued the Contractor authorization to obtain interagency fleet management system vehicles in performance of the contract, the Contractor shall follow the requirement of the Federal Fleet Management System known as FedFMS. The Contractor shall provide the information needed to satisfy the reporting requirement as stated in FedFMS on a monthly basis using the Fleet Management Information System. The Contractor shall also address any of the data gaps/incomplete records that already exist.

H-11 KANSAS CITY OVERSIGHT MODEL (REPLACED 0065)

KANSAS CITY OVERSIGHT MODEL

The NNSA is committed to improving the effectiveness and efficiency of the Nuclear Security Enterprise. This Clause sets forth an overview of NNSA's approach to achieve this commitment. The following provisions set forth the specific Contract requirements that will provide the Contractor the flexibility to improve its management and performance. This Clause and its provisions are consistent with the principles and practices contained the NSC/KCP Oversight Plan. The major elements include:

1. Section 1. Defining the Federal/Contractor Relationship
2. Section 2. Operating Requirements and Standards Management

3. Section 3. Management Assurance (Contractor Assurance)
4. Section 4. Accountability
5. Section 5. NNSA Oversight

Section 1. Defining the Federal/Contractor Relationship

- (a) To clarify the contractual relationship, NNSA will establish the work to be accomplished by the Contractor, set applicable operating requirements to be met by the Contractor, and will provide program and performance direction regarding what NNSA wants in each of its programs. The Contractor shall determine how the program is executed and shall be accountable for performance in accordance with the terms and conditions of this Contract. The Contractor will draw upon its expertise and ingenuity in determining how the work is to be accomplished in the most effective and efficient manner. NNSA will issue performance direction to the Contractor only through a Contracting Officer or a designated COR. All other Federal staff and oversight components are therefore precluded from tasking contractor personnel. The Contractor is accountable for assuring safe, secure, effective and efficient operations in accordance with the terms and conditions of this Contract.

- (b) Approach to Oversight

NNSA will increase Contractor accountability as a result of implementation of the Contractor's Management Assurance System to achieve improved Contractor performance on the Contract. Parent Organization oversight, consistent with the M&O contract, shall be a key feature of the Contractor's Management Assurance System. NNSA oversight will focus on evaluating systems and performance rather than transactions. NNSA will determine the level of NNSA oversight of all Contractor activities under this Contract, consistent with the Oversight Plan and approved funding levels. Oversight will focus on the essential outcomes of the following core requirements for the NSC: meeting product schedule; meeting product specification; cost management; asset management; and compliance to contract standards including ES&H and National Security.

- (c) Empowering Contractor Expertise

The Contractor is encouraged to identify and evaluate best commercial standards and best business practices and to continuously pursue cost effective and efficient improvements in Contract performance. To the extent permitted and/or required by the KCNSC M&O contract, the contractor parent(s) organization may provide functional leadership for the contractor, set core processes and policies, and determines best practices to be implemented, all while providing visibility of its management approach to NNSA. However, it is the M&O contractor which is in all respects accountable to the NNSA for contract performance. It is the KCNSC M&O contractor which performs the requirements of the contract in a manner which must satisfy NNSA expectations and provides compliant mission deliverables, products and services to NNSA. The Contractor shall draw upon the private-sector expertise of its parent organization to

improve contract performance as appropriate by maintaining and enhancing strong ties to the contractor's parent organization, the exercise of parent consultation over contract operations, and maintaining and expanding the application of corporate systems, processes and human resources to the contract.

(d) Results-Oriented, Streamlined Performance Appraisal

A results-oriented, streamlined performance appraisal process will be established with critical performance objectives, measures, and targets that focus on those areas of greatest strategic value to NNSA using systems-based metrics. The parties will maximize whatever flexibility is permitted within the NNSA Corporate Performance Evaluation Process to ensure site-specific priorities are incentivized.

(e) Reward for Achieving Cost Efficiencies

The Contractor will be rewarded for the achievement of cost efficiencies through onsite investment of cost savings with program approval.

(g) Performance Direction

The basic principles and processes related to technical or performance direction are covered in Clause DEAR 952.242-70 TECHNICAL DIRECTION.

- (1) The contractor is responsible for the management, integration, and operation of the site in accordance with the Terms and Conditions of the contract, duly issued Work Authorizations (WAs), and written direction provided by the Contracting Officer and the Contracting Officer's Representatives (COR). NNSA is responsible for establishing the work to be accomplished, the applicable standards and requirements to be met, and overseeing the work of the contractor. The contractor will use its expertise and ingenuity in contract performance and in making choices among acceptable alternatives to most effectively and efficiently accomplish the work called for by this contract.
- (2) The parties agree to maintain full and open communication at all times, and on all issues affecting contract performance, during the term of this contract. Technical or performance direction issued pursuant to this clause is intended to be consistent with the approach described above that government direction will be limited to "what" the contractor is required to accomplish. The contractor is encouraged to identify concerns to the Contracting Officer whenever it believes that performance direction directs "how" the contractor is intended to accomplish the work, and the Contracting Officer will work to revise the performance direction if appropriate.

Section 2. Operating Requirements and Standards Management

- (a) The Contractor shall comply with those "Operating Requirements" listed in Section J,

Appendix K or directed by the Contracting Officer that include DOE directives incorporated into the contract in accordance with the Contract Clause entitled "Laws, Regulations, and DOE Directives," best-in-class commercial standards and best business practices. A current list of operational requirements shall be maintained by the Contractor as an "Operating Requirements" section of a NSC plant information system that is to be updated as part of the "Operating Requirements" change control process and available to all employees and the NNSA. Revisions to the "Operating Requirements" may be made unilaterally by the Contracting Officer in accordance with the Contract Clause entitled "Laws, Regulations, and DOE Directives," or they may be initiated by the Contractor or NNSA through the process described in Paragraph (c) below.

- (b) The Contractor shall benchmark with industry as appropriate to identify best-in-class commercial practices and best business practices that may, when substituted for existing contractual requirements, improve site operations and cost effective performance, while effectively managing safety and security.
- (c) Operating Requirements Change Control
 - (1) Definitions:
 - (A) Baseline: The baseline shall consist of the Operating Requirements. The Contractor shall maintain a record of the baseline in its Command Media.
 - (B) Change: Any directive, inspection, audit finding, informal or formal communication that if implemented by the Contractor would add or delete an element to the baseline or would alter, increase or decrease the contractor's work relating to the baseline.
 - (2) Baseline Change Control Process – The parties shall jointly develop and use the Baseline Change Control Process for evaluating and recommending Baseline changes to the Contracting Officer. The Baseline Change Control Process shall not affect the application of otherwise applicable laws and regulations of the United States, including DOE/NNSA regulations.
 - (3) Implementation: The Contracting Officer will make a final decision on the recommendations resulting from the process. For change requests that have been initiated by the Contracting Officer, the Contractor will receive a comprehensive description of Contractor requirements necessitated by the change and a date for implementation.
 - (4) Documentation: Systems shall be established for documenting all change requests, Operating Requirements Review Board recommendations and decisions resulting from the process.
 - (5) Contract Modification: The contractor shall be under no obligation to respond to orders for changes to the Baseline absent a modification to this Contract. Any change to Operating Requirements approved by the Contracting Officer under this

clause shall be incorporated into the Contract under Section J, Appendix K.

- (6) Ordinarily no change will be made to the Baseline without first following the process identified in this Section and the associated Baseline Change Control Process. Nothing in this Clause is intended to limit the authority of the Contracting Officer to incorporate or reinstate a directive or requirement under the DEAR clause entitled "Laws, Regulations, and DOE Directives."

Section 3. Management Assurance (Contractor Assurance)

- (a) "Management Assurance System" is the contractor's comprehensive approach to ensuring it is performing the scope of work of this contract. A management assurance system includes activities designed to identify deficiencies and opportunities for improvement, report deficiencies to responsible management, and ensure that corrective actions are completed and effective. An effectively working management assurance system will provide the government the opportunity to reduce oversight.
- (b) The Contractor shall implement a Management Assurance System. The Management Assurance System shall, at a minimum.
 - (1) Align with the contractor's business including major functional areas and management systems relating to the contract;
 - (2) Be generally consistent with the model that the Contractor's Parent Organization deploys at its commercial manufacturing facilities;
 - (3) Apply the appropriate method of assurance to processes and systems including management reviews, oversight and administration, internal audits, internal independent assessments, and third-party assessments;
 - (4) Identify and rely upon performance metrics and targets to assess performance;
 - (5) Provide an approach to identify performance issues and take corrective actions;
 - (6) Contain an approach to continuous improvement of performance relying on benchmarking to identify best practices as appropriate.
 - (7) The Contractor's Parent Organization oversight shall be a key feature.
- (c) The Contractor shall document the architecture for the Management Assurance System. The Management Assurance System shall be monitored by the Contractor's parent organization.
- (d) The Contractor shall provide the NNSA with access to all elements of the Management Assurance System and visibility of its metrics; except the Contractor shall be under no obligation to disclose confidential or proprietary information generated by its parent

company or affiliates. Contractor performance data can never be considered to be confidential or proprietary information. The Contractor shall notify or make visible to the Contracting Officer any modifications to the Balanced Scorecard, framework of the Management Assurance System, or to the frequency or format of NNSA forums as defined by the Management Operating Systems.

Section 4. Accountability

The Contractor is responsible for the quality of its products and for assessing its operations, programs, projects and business systems and identifying deficiencies and implementing needed improvements in accordance with the terms and conditions of this Contract, regardless of whether NNSA has evaluated the Contractor's performance in any area of the Contract. The Contractor is encouraged to draw upon parent corporate leadership support (as applicable), systems and processes as well as independent third party assessments in assessing its own performance under this contract. The purpose of NNSA oversight is for assessing the Contractor's performance in meeting its obligations under this Contract. NNSA oversight shall not be relied upon by the Contractor in assessing its performance.

Section 5. NNSA Oversight

- (a) As used in this clause, "NNSA oversight" encompasses activities performed by NNSA organizations to determine the effectiveness of contractor performance of the Scope of Work. Oversight includes onsite reviews, assessments, performance evaluations, and other activities.
- (b) NNSA oversight – NNSA will determine the level of NNSA oversight of all Contractor activities under this Contract, consistent with the Oversight Plan and approved funding levels. NNSA will apply its oversight of the Contractor consistent with the contractor's approved management systems, the risk level of the work processes, the contractor's performance, and the effectiveness of the Contractor Assurance System. The Contracting Officer will seek input from the contractor on the appropriate type and level of effort of oversight for management systems and processes. The oversight mechanisms will be documented by NNSA, linked to the Contractor Assurance System and subject to modification. In general, NNSA oversight will be consistent with the following concepts:
 - (1) There will be less oversight in areas subject to well-recognized, independent third party assessments, when the third party assessments find that the contractor systems are performing adequately.
 - (2) The level of oversight will take into account whether areas are directly related to critical outcomes of the mission of the NSC, or areas that are not central to the core mission such as administrative support functions.
 - (3) Oversight will not unduly interfere with contractor efforts to implement industrial standards and/or best commercial practices.

- (4) Oversight is subject to increase in areas where performance deficiencies exist. However, prior to increasing oversight, the Contracting Officer will consider whether contractor corrective action plans provide sufficient assurance.
- (c) In addition to the rights and remedies provided to the Government under other provisions of the Contract, the Contractor shall fully cooperate with the NNSA oversight personnel and subject matter experts in the performance of their assigned oversight functions, and shall provide complete access to facilities, information and Contractor personnel.
- (d) The Contractor shall continue to be subject to the oversight of independent oversight functions authorized by the Secretary of Energy in the performance of their duties such as the Office of Security and Safety Performance Assurance or the Office of the Inspector General. The Contractor shall not comply with a finding, opinion, or directive of an Independent Oversight Function absent direction from the Contracting Officer.

H-12 COMMUNITY COMMITMENT CLAUSE IMPLEMENTATION (REPLACED 0017)

Pursuant to Section I clause DEAR 970.5226-3 Community Commitment, dated Dec 2000, the Contractor shall fund a profit investment pool from profit earned under this contract with \$1,000,000 per year over the duration of the exercised contract. The profit investment will be independent of actual fees earned and performance under the contract, and these funds shall not be recovered directly or indirectly against the contract. The Contractor shall place the earned profit investment into an escrow account to fund various initiatives. The contractor's investment is intended to support local community service projects. Prior to the start of each year of the contract's Base Term the Contractor shall inform NNSA leadership of its intended profit investment initiatives. The final list of FY 17 commitments will be negotiated with the NNSA prior to October 1, 2016.

H-13 NATIONAL SECURE MANUFACTURING CENTER GSA LEASE PAYMENT

The monthly National Secure Manufacturing Center GSA lease payment is \$1,148,124. In the event the NNSA does not recover sufficient indirect costs to fund the GSA lease payment for the National Secure Manufacturing Center, the Work for Others Fixed Fee will be reduced to cover the deficiency.

H-14 UPDATES TO FAR AND DEAR CLAUSES

The Contractor agrees that the Contracting Officer may, from time to time and at any time, unilaterally modify the Contract to revise, add or delete Section I FAR and DEAR clauses due to changes in the regulations or the approval of new deviations. Should there be an impact to the Contractor as a result of any such modification to the Contract, the Contracting Officer will provide appropriate consideration.

H-15 MANAGEMENT TEAM COMPENSATION

Amounts of compensation reimbursed during the first two years of contract performance shall not exceed the total proposed management team costs for any position, as reflected in *Section L Attachment G "Management Team Cost Sheet"* of the Contractor's proposal in response to solicitation No. DE-SOL-0007749. For the remaining years of the Contract, the Key Personnel compensation will be reimbursed in accordance with the Statement of Work, Chapter III, paragraph 3.2.3.

H-16 SMALL BUSINESS PARTICIPATION PLAN

At the request of the Contracting Officer the Contractor shall submit a Small Business Participation Plan. The Small Business Participation Plan shall be incorporated into Section J as an appendix to the Contract.

H-17 CONFERENCE MANAGEMENT (ADDED 0006)

The Contractor agrees that:

- (a) The contractor shall ensure that contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.
- (b) For the purposes of this clause, "conference" is defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015 entitled "Updated Guidance on Conference-Related Activities and Spending."
- (c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:
 - (1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:
 - (i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
 - (ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).
 - (2) The contractor authorizes use of its official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non-M&O

contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).

- (d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.
- (e) The contractor will provide information on conferences they plan to sponsor with expected costs exceeding \$100,000 in the Department's Conference Management Tool, including:
 - (1) Conference title, description, and date
 - (2) Location and venue
 - (3) Description of any unusual expenses (e.g., promotional items)
 - (4) Description of contracting procedures used (e.g., competition for space/support)
 - (5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees)
 - (6) Number of attendees
- (f) The contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed \$100,000 until notified of approval by the contracting officer.
- (g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the contracting officer.
 - (1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:
 - (i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
 - (ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.

- (2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.
 - (3) The contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.
- (h) For *non-contractor sponsored conferences*, the contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:
 - (1) Track all conference expenses.
 - (2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of \$100,000 or greater.
- (i) Contractors are not required to enter information on non-sponsored conferences in DOE'S Conference Management Tool.
- (j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than \$10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may be deemed unallowable.

H-18 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2015) (ADDED 0006)

- (a) Definitions. As used in this clause—

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect cost.

“M&O Subcontract Reporting Capability (MOSRC)” means a DOE system and associated processes to collect key information about M&O first-tier subcontracts for reporting to the Small Business Administration.

“Transaction” means any awarded contract, agreement, order, or modification, etc. (other than one involving an employer-employee relationship) entered into by a DOE M&O prime contractor calling for supplies and services (including construction) required solely for performance of the prime contract.

- (b) Limited Interim Reporting.
 - (1) The Contractor shall report no less than the twenty highest dollar value first-tier small business subcontract transactions under the contract by December 1 for the previous fiscal year until the Contractor business systems can report the required data as set forth in paragraph (c) below. Classified subcontracts shall be excluded from the reporting requirement and shall not be counted towards the total number of transactions of the reporting requirement.
 - (2) Transactions with a corporation, company, or subdivision that is an affiliate of the Contractor are not included in these reports.
 - (3) The Contractor shall provide the data on first-tier small business subcontract transactions under the contracts, as described in the MOSRC Guide via the Microsoft Excel spreadsheet co-located at <https://max.gov> in the MOSRC Collaboration Center. The spreadsheet will be submitted to HQProcurementSystems@hq.doe.gov.
- (c) Full Reporting. The Contractor shall update their business systems and processes to collect and report data to MOSRC in compliance with the MOSRC Guide. The Contractor shall report data in MOSRC for FY17 (and each year thereafter) first-tier small business subcontracting transactions under the contract. Classified subcontracts shall be excluded from the reporting requirements. All Contractor systems shall be updated in order to provide the first FY17 report in November 2016 for October 2016 transactions.
- (c) Pilot M&Os. Oak Ridge National Laboratory, the National Security Campus at the Kansas City Plant, and the National Renewable Energy Laboratory shall have their business systems updated in order to provide the first FY 16 report in April 2015 for March 2015 transactions.

H-36 STRATEGIC PLANNING

A key element to sound plant stewardship and governance is a shared strategic level vision for the future of the plant and the strategic investments necessary across mission support areas to assure the plant’s continued future vitality and capability to perform its missions. To aid in strengthening this alignment, the M&O partner leadership from each NNSA Plant/Laboratory shall work in coordination with NNSA site office and HQ functional and program leadership in developing and presenting annual plant strategic plan. To enable a uniform and consistent reporting approach and to allow for the process

to evolve and change as necessary, NNSA will provide annual report and presentation guidance. The information from these activities provides the starting point for periodic and continuous discussions between the DOE/NNSA and management and operating partners' leadership about the site's future directions, immediate and long-range challenges, and resource needs. The results of these activities are intended to ensure alignment with agency goals, priorities, and budgets.

SECTION J**APPENDIX H****KEY PERSONNEL**

<u>Name</u>	<u>Title</u>	Total Reimbursable Compensation	
		<u>Base Term (Year 1)</u>	<u>Base Term (Year 2)</u>
John Ricciardelli	FM&T President	\$262,000	\$280,000
Martin Schoenbauer	Senior Director, Directed Stockpile Work	\$269,802	\$284,279
VACANT	Senior Director, Global Security	N/A	N/A
Robin L. Stubenhofer	Vice President, Engineering	\$423,836	\$442,833
Keith Ice	Vice President, ISC	N/A	\$218,796
Jennifer Valverde	Director, Global Security (Field Intelligence Element (FIE) Director)	N/A	\$183,972

Operating Requirements

SECTION J

APPENDIX K

LIST OF APPLICABLE DIRECTIVES

Directive	Directive Title
10 CFR 824, Current Rule	Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations
10 CFR 830 - Current Rule	Nuclear Safety Management
10 CFR 851 - Current Rule	Worker Safety and Health Program
10 CFR 1047	Use of Deadly Force
ANSI N323A	Radiation Protection Instrumentation Test and Calibration Portable Survey Instrumentation, 1997
ANSI N43.2	Radiation Safety for X-Ray Diffraction and Fluorescence Analysis Equipment
ANSI N43.3	American National Standard for General Radiation Safety - Installations Using Non-Medical X-Ray and Sealed Gamma-Ray Sources, Energies up to 10 MeV
Disposition and Long-Term Stewardship Site Standard Dated 2/5/2010	Disposition and Long-Term Stewardship Site Standard Dated 2/5/2010
DOE Accounting Handbook	DOE Accounting Handbook (chapters) 1 Accounting Overview (revised 4/27/07) 4 Accounting Systems and Organization (revised 9/9/98) 5 Accounting for Obligations (revised 7/18/07) 6 Cash (revised 9/30/08) 7 Advances, Prepaid Expenses, and Other Assets (revised 4/17/07) 8 Receivables (revised 12/10/04) 9 Accounting for Inventory and Related Property (revised 4/16/07) 10 Property, Plant and Equipment (revised 4/30/09) 11 Liabilities (revised 3/6/07) 12 Inter-Entity Transactions (revised 9/7/06) 13 Reimbursable Work, Revenues and Other Collections. (revised 3/15/2011) 15 Cost Accounting ((Original Issue) 16 Payroll Accounting (revised 9/2/08) 17 Transportation (revised 1/13/05) 21 Financial Close-out (revised 7/17/07)
DOE Annual Budget Call	DOE Annual Budget Call
DOE M 435.1-1, Chapter IV, para I & J	Radioactive Waste Management Manual
DOE O 411.2, Attachment 1, CRD	Scientific Integrity

Operating Requirements

Directive	Directive Title
DOE M 481.1-1A, Chg 1	Reimbursable Work For Non-Federal Sponsors Process Manual
DOE O 130.1	Budget Formulation
CNSS 1253	Security Categorization and Control for National Security Systems
DOE O 142.3A Chg 1, Section 5 paragraphs e, f, g and K. Attachment 1, CRD and Attachment 2.	Unclassified Foreign Visits and Assignments Program (Partial Implementations)
DOE O 221.1B	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
NNSA SD 226.1B, Attachment 1, CRD	NNSA Site Governance
NAP-31	NNSA M&O Off-Site Extended Duty Assignments
DOE O 350.2B	Use of Management and Operating or Other Facility Management Contractor Employees for Services to the DOE in the Washington DC Area
DOE O 412.1A, Admin Chg 1	Work Authorization System
DOE O 414.1D, Admin Chg 1, Attachment 3 pages 1 & 2	Quality Assurance, Attachment 3, Pages 1-2, DOE-Wide Suspect/Counterfeit Item Prevention Process
DOE O 413.3B Change 3, Attachment 1, CRD	Program and Project Management for Acquisition of Capital Assets
DOE O 420.1C, Attachment 2, CRD, Chapter II, Fire Protection	Facility Safety, Attachment 2, Contractor Requirements Document, Chapter II, Fire Protection
DOE O 430.1C	Real Property Asset Management
DOE O 435.1 Chg 1	Radioactive Waste Management
DOE O 461.1C, Attachment 1	Packaging and Transfer for Offsite Shipment of Materials of National Security Interest Attachment 1
DOE O 452.7, Attachment 1, CRD, except paragraphs 3.e, 3.f, 3.h.(2)(a), 7.a, 7.b.(1), 7.b.(2), and 8.a.(6).	Protection of Use Control Vulnerabilities and Designs
DOE O 452.8, Attachment 1, CRD, paragraph 1 (except 1.b(2) does not apply), paragraph 2 (except 2.b(2) does not apply), paragraph 3, paragraph 4 (Access Requirements), paragraph 4 (Oral/Visual Communications (except 4.c and 4.d do not apply), paragraph 5 (Receiving and Transmitting), (except 5.b, 5.g(2), 5.g(3)(Top Secret RD Sigma 18) and 5.h(2) do not apply), paragraph 6 (except 6.c, 6d and 6.e do not apply), paragraph 9 and paragraph 10.	Control of Nuclear Weapon Data
DOE O 457.1A, Appendix B, CRD, paragraph 2.a, 2.d, 4.c, 4.c.(1), 4.c.(1)(a), 4.c.(1)(a)1, 4.c.(1)(a)2, 4.c.(1)(a)3, 4.c.(1)(a)4, 4.c.(1)(b), 4.c.(1)(c), 4.c.(1)(d),	Nuclear Counterterrorism

Operating Requirements

Directive	Directive Title
DOE O 470.4B, Chg 2, Attachment 1, CRD, except paragraphs 1.c, and 3 (Definitions), Attachment 2, CRD, Section 1, except paragraphs, 1., 2., 3., 3.a, 3.b, 3.c, 3.d, 4., 4.a-n, 5.f, 5.h, Attachment 2, Section 1, Chapter 1, except paragraph, 1.e, Attachment 2, Section 1, Chapter II, except paragraphs and 8. (all subs), Chapter III, except paragraphs 4.b and 4.c, Attachment 2, Section 2, except paragraphs, 1., 1.a, 1.b, 2., 3., 3.a, 3.b, 3.c, 3.d, 3.e, 3.f, 4.a thru l, 6., Attachment 3, CRD, except paragraphs 1,2, Attachment 3, CRD, Section 1, except paragraphs, 1., 2., 3., 3.a, 3.b, 4., 4.a thru o, 5., 5.a thru n, Attachment 3, Section 1, Chapter I, except paragraph 1.a, Attachment 3, Section 2, except paragraphs, 1., 2., 3., 4., Attachment 3, Section 2, Chapter I, except paragraphs, 2.c, 4.a, 4.b, Attachment 3, Section 2, Chapter II, no paragraphs apply, Attachment 3, Section 3, except paragraphs, 1., 2., 3., 4., Attachment 3, Section 4, except paragraphs, 1., 2., 3., 4., Attachment 3, Section 5, except paragraphs, 1., 2., 3., 4., Attachment 3, Section 6, no paragraphs apply, Attachment 4, no paragraphs apply, Attachment 5, no paragraphs apply, Attachment 5, Section 1, except paragraphs, 3.f.(1), 3.f.(4), 3.f.(9), 3.F.(10), 4.b.	Safeguards and Security Programs
DOE O 471.1B, paragraphs 4.a.(9), 4.b. plus all subparagraphs, 4.c, 4.d.(1), 4.d.(1)(b), 4.d.(2), 4.h. plus all subparagraphs, 4.j plus all subparagraphs, 4.k.(1), 4.k.(3) plus all subparagraphs, 4.l, 5.j.(1) thru 5.j.(4), 5.n, and Attachment 1, CRD except paragraphs 3.a thru 3.g (including all subparagraphs), 4.b (including all subparagraphs), 8.b, 10.a.	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.3, Chg 1, Attachment 1, CRD DOE O 471.5, Attachment 1, CRD, and Attachment 2 paragraphs 1.a(1), 1.a(2), 1.a(3)(a), 3, 3.a(4), 3.b, 3.b(5), 5, 5.a, 6, 6.c, 11, 12, 12.a, 12.b, 12.c	Identifying and Protecting Official Use Only Information Special Access Programs

Operating Requirements

Directive	Directive Title
DOE O 471.6, Chg 2, Attachment 1, CRD	Information Security
DOE O 472.2, Chg 1, paragraph 4.a(3) and 4.a(4), Attachment 1, CRD, except paragraph 17 and 18 do not apply, Attachment 2, except paragraph 3 does not apply, Attachment 3, except paragraph 1.c through 1.n do not apply, Attachment 4.	Personnel Security

Operating Requirements

Directive	Directive Title
<p>DOE O 473.3A,6/27/2011, Attachment 1, CRD, except paragraphs 1, 2, 3, and 4, Attachment 2, except all of paragraphs 1 and 2, Attachment 2, Section A, except paragraphs 2.c, 3.a.(1), 3.a.(3)(a), 3.a.(3)(b), 3.a.(3)(c), 3.b, 4.a(3), 4.b(1), 5., 6.c, Attachment 2, Section B, except paragraphs 2.b, 3., 5.b, 11.a, 11.b, 11.d, Attachment 2, Section C, except paragraphs 1.a, 2. (including all subparagraphs), 4.a (including all subparagraphs), Attachment 2, Section D, no paragraphs apply in this section, Attachment 2, Section E, except paragraphs 3.b.(5), 3.b.(7), 3.b.(9)(b) 1&2, Attachment 2, Section F, no paragraphs apply in this section, Attachment 2, Section G, no paragraphs apply in this section, Attachment 2, Section H, no paragraphs apply in this section, Attachment 2, Section I, except paragraphs 1.f.(5)(a)(1 thru 5), 1.f.(5)(b), 5.(including all subparagraphs), Attachment 2, Section J, except paragraphs 1.a.(2), 2.a(3 thru 6), 3.c(1 thru 3), 3.g, 4.a.(4), 4.a.(5) (including all subparagraphs), 4.a.(6 thru 10), 5.b.(4 thru 6), 5.c (including all subparagraphs), 5.d (including all subparagraphs), 6., 7., 8. (including all subparagraphs), Attachment 2, Section K, except paragraphs 1.a, Attachment 2, Annex 1, except paragraphs 1.a.(2), 1.b.(2), 1.c.(1), 2.a, 2.b (including all subparagraphs), 2.c.(1 & 2), 2.c.(4 thru 10) (including all subparagraphs), 3.b, 3.c, Attachment 2, Annex 2, except paragraphs 1.c(1 thru 3), 1.f, 7.b(1 thru 4), 7.b(6 & 7), 8.b(6 thru 8), 8.b(14 & 15), 8.c(2), 8.c(4 & 5), 8.c(6)(a), 8.c(6)(c), 8.c(6)(e), 8.c(9 thru 11), 8.d(2), 8.d (5 & 6) (including all subparagraphs), 8.e (including all subparagraphs), 9. (including all subparagraphs), 10.b(1)(c), 10.e (including all subparagraphs), Attachment 2, Annex 3, no paragraphs apply, Attachment 2, Annex 4, no paragraphs apply, Attachment 3, no paragraphs apply,</p>	Protection Program Operations

Operating Requirements

Directive	Directive Title
DOE O 474.2, Chg 4, Attachment 1, CRD, except paragraphs 1,2,3, 3.b(2) thru 3.b(4), 3.d(2)(d), 6(a), Attachment 2, except paragraph 1 & 2, Table A, Table C paragraph 2, Table C, 2., Table C, 3., Table C, 5., Attachment 3, except paragraph 1 and 2, 1.b, 1.v, 1.y, 2.a, 2.b, 2.c, 2.d,2.g, 2.i, 2.o, 2.s, 3.c, 3.d, 3.f, 3.h, 3.j, 3.k, 3.m, 3.n, 3.o, 4.c, 4.d, 4.h, 4.i, 4.j, 5.a, 5.c, 5.f, 5.k, 5.m, 5.n, 5.o, 5.p do not apply.	Nuclear Material Control and Accountability
DOE O 475.1 DOE O 475.2B, Attachment 1 (all except para 2.s), Attachment 2, except paragraphs 2.a (including all subparagraphs), 2.b.(3)(a) (including all subparagraphs), 2.b.(4), 2.b.(5), 2.c (including all subparagraphs), 2.d (including all subparagraphs), 2.e.(2)(a)1, 2.e.(2)(a)2a, 2.e.(2)(a)2c, 2.e.(2)(a)2d, 2.e.(2)(b), 2.e.(3) (including all subparagraphs), 2.e.(4), 2.f.(1), 2.f.(2)(a) (including all subparagraphs), 2.f.(2)(b)1, 2.f.(3), 2.f.(4), 2.f.(5), 2.f.(8), 2.f.(9)(b), Attachment 3, except paragraphs 6. (including all subparagraphs), and 7. (including all subparagraphs), Attachment 4, except paragraphs 2.a.(4), 4.a, Attachment 5, except paragraphs 1.a.(1) thru 1.a.(2) (including all subparagraphs), 1.a(4), 1.g.(2), 1.g.(3), 4. (including all subparagraphs), Attachment 6, except paragraphs 1.c, 2.a (including all subparagraphs), 2.c (including all subparagraphs), 2.d (including all subparagraphs), and 2.e (including all subparagraphs), Attachment 7, except paragraphs 1.a.(1)(b), 1.a.(2) thru 1.a.(4), 1.b (including all subparagraphs), 2.a.(1), 2.b.(1)(b), 2.b.(2) thru 2.b.(4), 2.d (including all subparagraphs), Attachment 8, all paragraphs apply, Attachment 9, no paragraphs apply.	Counterintelligence Program Identifying Classified Information
DOE O 452.1E, Attachment 1 CRD, paragraphs 8, 9a, 9b, 9c(1) and 11.	Nuclear Explosive and Weapon Surety Program

Operating Requirements

Directive	Directive Title
DOE O 452.4C, Attachment 1, CRD paragraphs 1a, 1c, 1e, 1h, 1i, 1k, 1m, 1n, 1o, 2d, 4, 6a, 6b2, 6d, 6e, 7	Security and Use Control of Nuclear Explosives and Nuclear Weapons, August 28, 2015
DOE O 481.1D	Strategic Partnership Projects (Non Department of Energy Funded Work)
DOE O 483.1B Attachment 1, CRD	DOE Cooperative Research & Development Agreements
DOE O 522.1	Pricing of Departmental Materials and Services
DOE O 534.1B	Accounting
OHSAS 18001:2007 Health and Safety Management System Standard	Health and Safety Management System Standard
Energy and Environmental Sustainability Site Standard, November, 2016	Energy and Environmental Sustainability Site Standard, November, 2016
FM&T Worker Safety & Health Program, current KCSO Approved Document	FM&T Worker Safety & Health Program, current KCSO Approved Document
Counterintelligence Roles and Responsibilities (CI R&R) dated May 12, 2012	Counterintelligence Roles and Responsibilities (CI R&R) dated May 12, 2012
International Building Code / Latest Standard as of Project Authorization	International Building Code / Latest Standard as of Project Authorization
ISO 14001:2004	Environmental Management Systems Specifications
ISO 17025:2000	Standards and Calibration
ISO 9001:2008	Quality Management System Requirements
Kansas City Plant Site-Specific Maintenance Standard, November 28, 2016	Kansas City Plant Site-Specific Maintenance Standard, November 28, 2016
Kansas City Plant Standard for Radiological Release for Unrestricted Use 3/8/2011	Kansas City Plant Standard for Radiological Release for Unrestricted Use 3/8/2011
Kansas City Plant Facilities Engineering Site-Specific Project Management Standard April 12, 2017	Kansas City Plant Facilities Engineering Site-Specific Project Management Standard April 12, 2017
KCP Site Security Standard, Rev 21	Kansas City Plant Site Security Standard, Rev 21
NIST 800-53 Rev 4	Security and Privacy Controls for Federal Information Systems and
NNSA SD 205.1	Baseline Cybersecurity Program
NNSA SD 430.1, Attachment 1, CRD	Real Property Asset Management
NNSA SD 452.3-1A	Defense Programs Business Process System
NNSA SD 473.3, Para 5.c, 5.d, 5.e, Attachment 1-CRD(all except para 1d), and Attachment 2-METL Description	Enterprise Mission Essential Task List-Based Protective Force Training Program

Operating Requirements

Directive	Directive Title
NFPA 1600 (Sections 5.1 thru 5.7, 6.1 thru 6.11, 7.1 thru 7.5, 8.1 & 8.2)	Standard for Disaster Emergency Management, 2010 Edition
NFPA 704	Standard System for the Identification of the Hazards of Materials for Emergency Response, 2007 Edition Chapter 5 Health Hazards
Production Accounting Handbook, October 2001	Production Accounting Handbook, Albuquerque Financial Service Center, October 2001
OST M 1.27	Quality Assurance Program, Rev 0, dated 6/14/2016
NAP-24A	NNSA Weapons Quality Policy, dated November 24, 2015 - includes Weapons Quality Assurance Guidance and Clarification Message 2017-001 - Improvements to NAP-24A, Attachment 3, Section 3.3 Stamping and Marking Policy
QP 100-1, Amendment 4	Quality Plan No: 100-1 Date: March 1, 2013 Amendment No. 4
Weapons Quality Assurance Procedures Manual, March 30, 2009	Weapons Quality Assurance Procedures Manual, March 30, 2009
NAP-25 Admin Chg 1, CRD	Management and Operating Contractor Business Meals and Light Protection of Human Research Subjects
DOE O 443.1B Attachment 1, CRD	Atomic Energy Act control of Import and Export Activities
NAP-23 Admin Chg 1, Attachment 1, CRD	Insider Threat Program
DOE O 470.5 Attachment 1, CRD	Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns
DOE O 442.2 Change 1, Attachment 1, CRD	Departmental Materials Transportation and Packaging Management Official Foreign Travel
DOE O 460.2A, Attachment 2, CRD, Section 7	Packaging and Transportation Safety
DOE O 551.1D, Chg 1, paragraph 5.e, Attachment 1, CRD.	
DOE O 460.1D, Section 4, Requirements, paragraph f and Attachment 1, CRD, Paragraph 8	

Reference	Reference Title
DOE O 231.1B Chg 1, Attachment 1, Item 1 & Attachment 2	Environmental, Safety & Health Reporting
DOE O 231.1B Chg 1, Attachment 1, Item 2a & Attachment 3, Items 1 & 2	Environmental, Safety & Health Reporting

Operating Requirements

Directive	Directive Title
DOE O 231.1B Chg 1, Attachment 1, Item 2b & Attachment 3, Item 3	Environmental, Safety & Health Reporting
DOE O 231.1B Chg 1, Attachment 1, Item 3 & Attachment 4	Environmental, Safety & Health Reporting
DOE O 232.2A, Attachment 1, CRD, Attachment 2, Occurrence Reporting Criteria, Attachment 3, Occurrence Report Preparation, Attachment 4, Occurrence Reporting Model, except paragraph 6.d,	Occurrence Reporting and Processing of Operations Information
DOE O 231.1B Chg 1, Attachment 1, Item 4 & Attachment 5	Environmental, Safety & Health Reporting
DOE O 151.1D, Attachment 1, CRD and Attachment 2, Definitions	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 3,	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 4	Comprehensive Emergency Management System
DOE O 151.1D, Attachment 4	Comprehensive Emergency Management System
DOE O 206.1	Department of Energy Privacy Program
DOE O 241.1B, AC1	Scientific and Technical Information Management -Scientific Technical Information (STI) Products and Announcements (AN)
DOE O 252.1A, Admin Chg 1, Attachment 1, para 4	Technical Services Program, VCS activities only

SECTION I
APPENDIX G
PERSONNEL APPENDIX

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1.0 Introduction

The Contract DE-NA0002839, Federal Acquisition Regulation (FAR) Part 31, Department of Energy Acquisition Regulation (DEAR) Part 931 and DEAR 970.30 govern the allowability of personnel and other related costs incurred pursuant to the Contract. This Appendix sets forth personnel and other related policies that have cost implications under this Contract and are not covered explicitly in FAR or DEAR cost principles. This Appendix identifies those costs deemed reasonable and allowable for reimbursement when incurred in the performance of Contract work. The Contractor shall seek Contracting Officer approval prior to incurring costs not specifically identified as allowable in this Contract. The Contractor shall identify and treat all unallowable costs and directly associated unallowable costs in accordance with the criteria set forth in FAR 52.230-2, *Cost Accounting Standards*, including but not limited to placing unallowable costs in appropriate allocation bases.

The Contractor shall obtain prior Contracting Officer approval of changes within the scope of the Personnel Appendix when such changes are expected to increase costs to the Government. In situations where changes may set a precedent among the Department of Energy/National Nuclear Security Administration (DOE/NNSA) Contractors, the Contractor shall consult with the Contracting Officer regarding program cost reimbursement prior to implementation, even if there is no expected increase in cost. This requirement is not intended to prohibit the Contractor from taking advantage of efficiency gains realized from new and innovative approaches in providing Human Resource services.

The Contractor shall use effective management review procedures and internal controls to assure that the allowable costs set forth herein are not exceeded. In addition, the Contractor shall ensure that, cost items which require prior approval of the NNSA Contractor Officer or designated representative are reviewed and approved prior to incurrence of costs.

Either party may request revisions to this Appendix and both the parties agree to give consideration in good faith to any such request. When revisions to this Appendix are made, a contract modification shall be executed to effect the changes.

This Appendix is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party.

2.0 Definitions

The following terms as used in this Appendix have the meaning defined herein..

Compensation Increase Plan (CIP): A plan for established need and specifying distribution of maximum dollar amounts and/or percentage of base payroll on an annualized basis, to be allocated to employee groups for base pay increases or lump sum payments during a pay year. The amounts approved are for granting merit, Promotion, Adjustment, and Reclassification increases.

President: The representative with overall responsibility for the operation of the Contractor.

Shift Definitions: A regularly assigned shift is one to which the employee is assigned for one week or more.

- First Shift: A shift that begins at or after 4:00 a.m., but prior to 1:00 p.m.
- Second Shift: A shift that begins at or after 1:00 p.m., but prior to 9:00 p.m.
- Third Shift: A shift that begins at or after 9:00 p.m., but prior to 4:00 a.m.

Salaried Employee: Referred to in this document to include exempt and non-exempt employees, excluding hourly employees,

Vacation Year: Recurring 12-month period as defined by the contractor (service date, calendar year or other focal date).

Variable Pay: A lump-sum, non-base cash payment separate from base salary.

Vice President: A general management representative who reports directly to the President, as defined above.

Workweek: A fixed and regularly recurring period of 168 hours which normally consists of 40 work hours completed within a designated period of seven consecutive days and considered as a unit when pay is computed. This can include flexible work schedules (such as 4/40 or 9/80) designed to fulfill work requirements in fewer days by increasing the number of hours worked in a single workday.

3.0 Compensation

The Compensation System program costs directly attributable to compensation provided to Contractor employees will be allowable under this Appendix G. Section 3.0, Compensation, does not apply to bargaining unit employees. Section 4.0 sets forth allowable costs associated with bargaining unit employees.

3.1 Variable Pay - TBD

- A. Variable pay is reimbursable as outlined in the annual Compensation Increase Plan (CIP) and allows the company to maintain a competitive position in the external market to attract, retain, and motivate top talent.
- B. Non-base payments determined concurrently with salary increases and certain non-base awards may be granted throughout the year. These awards are funded from the total non-base budget. The Contractor shall develop a plan for non-base bonuses and submit to the Contracting Officer for approval.

3.2 Overtime

- A. *Annual Budget for Overtime:* The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this Contract. The Contractor shall submit to the Contracting Officer overtime utilization reports no later than one month after the end of each quarter (end of quarter = March 31, June 30, September 30 and December 31). If the report indicates that overtime comprised 4% or more of the overall payroll, the Contracting Officer may request that the Contractor submit a plan to lower the overall usage overtime rate as a percentage of payroll for the quarter following the quarter in which overtime exceeded 4% of total payroll.
- B. *Extended Workweek and Flextime:* When deemed essential to the performance of work under this Contract, the Contractor may establish an extended workweek. Extended workweeks shall require the appropriate approval and timely notification to the Contracting Officer. This will be reimbursed in accordance with the Extended Workweek and Flextime Plan approved by the Contracting Officer.
- C. All other overtime is paid in accordance with the Fair Labor Standards Act.
- D. An exempt employee may be granted overtime or compensatory paid time off without loss of pay upon the approval of a Director under the circumstances identified below.
 - 1. Work considerably in excess of the employee's normal work hours during a week(s) for which overtime pay is not received or
 - 2. Work on a designated holiday: Such time off should be taken within three (3) months following the time it was granted unless unusual operating requirements make it impractical to do so.

3.3 Shift Differential and Paid Lunch Period

Shift differentials may be paid to eligible employees consistent with the shift differential authorized in the IAMAW collective bargaining agreement. Eligible employees are non-bargaining employees assigned to 2nd and 3rd shift.

It is allowable to include a paid lunch period for salaried Security, Fire Protection and Utilities Operations employees who are precluded from leaving their duty posts as required for continuous operation needs.

3.4 Call-In and On-Call Allowance

- A. Call-in allowances may be paid to employees and reimbursed in accordance with the following:
 - 1. Non-exempt employees required to return to the worksite after leaving or outside of the regular work schedule, may receive a minimum of four (4) hours of call-in pay, or pay for the hours actually worked, whichever is greater, for each trip made to the worksite.
 - 2. Non-exempt employees required to provide support to internal or external customers, away from their normal work schedule, while at home or other non-work location, will have time worked aggregated and will be paid a minimum of 2 hours or hours worked, whichever is greater.
- B. On-Call pay is allowable as follows: A non-exempt employee that is on call may receive one (1) hour of on-call pay for each 24-hour period on call. If the employee is required to return to work during non-scheduled working hours, the call in pay policy would apply to the time actually worked. On-call pay is not time actually worked, so hours spent on-call are not counted as hours worked for the determination of overtime eligibility in that pay period.

3.5 Special Allowances

Special salary allowances may be paid to employees for certifications and/or qualifications and in specific work environments, and reimbursed in accordance with the Special Allowance Plan listed here.

Pay to Surviving Spouse or Dependents

In the event of death of an employee while on the active payroll or on an approved leave of absence during which the employee is credited with service, an employee's spouse or dependent(s) may be eligible to receive payment for earned, unused vacation as provided for in this Personnel Appendix.

3.6 Approval of Individual Compensation Actions in Excess of Salary Range

The Contractor shall obtain DOE/NNSA approval for any proposed salary amount paid an employee in excess of the salary range prior to payment.

3.7 Pay in Lieu of Notice

In the event the Contractor allows an Exempt Employee to resign because the services of such Employee cannot be productively utilized during the period of notice or if his/her presence at the work site during the notice period is not desired, the Contractor may pay the employee at his/her base pay for two (2) weeks in lieu of continuing the employee's employment for two weeks. However, such payment shall be approved in advance by the Contracting Officer.

3.8 Severance Pay

Severance schedule to be included here upon approval by Contracting Officer as required in Section J Appendix A, Statement of Work, Chapter III Section 3.0, Compensation, Section 3.2.7.

Severance Pay equals one week of Pay for each full year of Service, plus a pro-rated portion of one week's Pay for any partial year of Service up to 26 week's pay.

4.0 Labor Relations – Collective Bargaining Agreements

Costs of wages and fringe benefits to employees represented by collective bargaining units and all other costs and expenses incurred pursuant to the provisions of collective bargaining agreements and revisions thereto are allowable costs provided the Contractor adheres to requirements provided in Section J Appendix A, Statement of Work, Chapter III Section 5.0, Labor Relations.

The incumbent contractor is a party to collective bargaining agreements with the following titles as of the date of issuance of the RFP:

- International Association of Machinists and Aerospace Workers, Local Lodge No. 778
- The International Union, Security, Police and Fire Professionals of America and its Amalgamated Local No. 251

Expenses, including contracted legal counsel expenses, related to grievance processing and settlement, arbitration and arbitration awards, litigation involving actions related to collective bargaining, and other associated expenses including costs of meeting rooms, presentation equipment and materials, working meal and room allowances for Company bargaining representatives related to collective bargaining

are allowable costs.

Expenses associated with employee representation activities that are not prohibited by Section 302 of the Labor Management Relations Act, 29 U.S.C. § 186, or any other applicable law, are allowable costs.

5.0 Group Insurance and Legally Required Payments

5.1 General Provisions

- A. Costs incurred in implementing, administering, and funding comprehensive DOE/NNSA approved group insurance plans are allowable. Administrative costs associated with the effective administration of the plans include such items as publicizing, enrolling, maintaining records, and providing employees with assistance in understanding and collecting their benefits.
- B. Annual renewal of the group insurance policies, certificates and accounts, cost-sharing arrangements, renewal of group services agreements establishing new premium rates and the implementation of changes of minor significance does not require Contracting Officer approval.
- C. The Contractor is responsible for administrative functions related to medical insurance for retirees or their surviving spouses or dependents formerly administered by the Bendix Field Engineering Corporation at the Grand Junction, Colorado facility under Contract No. DE-AC07-76GJ01664.
- D. The Contractor is responsible for administrative functions related to medical insurance for retirees or their surviving spouses or dependents covered by Kansas City Division Hourly employees Pension Plan Provisions Applicable to Employees Represented by the Hotel Employees, Restaurant Employees, Local No. 64, AFL-CIO. Premium charges minus participant contributions for such insurance are allowable.

Contractor health and welfare plans and costs for the non-bargaining active Employees and retirees are as follows:

Plan (effective 1/1/2016)	Contractor Cost Share
Health and Welfare Plans (medical, dental, vision)	Health 65% Dental 84% Vision 0%
Life Insurance (up to 1.5x annual base)	100%
Supplemental Life	0%
AD&D (1.5x annual base)	100%
AD&D Supplemental	0%

Short Term Disability	100%
Long Term Disability	0%
Travel Accident Insurance	100%
Flexible Spending Accounts	0%
Healthcare Savings Account	None (Effective 1-1-16)
Retiree Health Insurance	80% of annual cap

Beginning June 1, 2002, a taxable income credit shall be provided to all eligible employees during the length of their employment under this contract. Eligible employees are those salaried employees and hourly to salaried transfers hired prior to March 1, 2001 who are employed under the contract on June 1, 2002. This credit shall be given to offset the elimination of the Long-Term Disability benefit effective June 1, 2002 that was once provided under the pension program. This credit shall be calculated at \$0.43 / \$100 of an eligible employee's salary on May 1, 2002 and received every pay period.

5.2 Displaced Workers Medical Benefits Program (DWMBP)

The Contractor may provide Displaced Workers Medical Benefits to displaced workers if provision of such benefit is set forth in the Contractor's workforce restructuring plan that is approved by DOE/NNSA (see Section J, Appendix A, 6.2).

Benefits under the DWMBP are available to displaced workers who are not eligible for health insurance coverage under another plan, e.g., another employer's health plan, the Contractor's retiree medical plan, a spouse's medical plan or Medicare. Generally, DWMBP benefits are as follows (note: NNSA may approve Contractor workforce restructuring plans that include less years of coverage):

- A. For the first 12-month period after the termination date, the Contractor shall continue to pay the employer portion of the medical premium and the separated employee will pay a premium equal to the monthly premium paid by active employees for the type and level of coverage the separated Employee has at the termination Date.
- B. Beginning in the second year after the termination date, the separated employee will be responsible for one-half of the full Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) rate for this coverage and the Contractor shall pay the remainder.
- C. Beginning in the third and final year of the DWMBP, the separated employee will be responsible for paying the full COBRA. For employees separated after the Base Term of this agreement, at the end of the third year the employee's coverage eligibility ends.

6.0 Retirement Plans

The Contractor shall administer the following DOE/NNSA approved pension plans for purposes of Sections [6.1 and 6.2].

- Honeywell Retirement Earnings Plan for Aerospace Employees at the Kansas City Division;
- The Kansas City Division (Honeywell International Inc.) Hourly Employees Pension Plan (covering IAM Local Lodge 778 and Local No. 64 AFL-CIO) and
- Honeywell Savings and Ownership Plan.

6.1 General Provisions

Reasonable costs involved in implementing, administering, and funding DOE/NNSA approved pension plans are allowable. Reasonable administrative costs associated with the effective administration of the DOE/NNSA approved pension plans include such items as publicizing, enrolling, maintaining records, and providing employees with assistance in understanding and collecting their benefits. In addition, only plan contributions that are related to compensation reimbursed by DOE/NNSA under the contract are allowable costs.

The Contractor is responsible for the administrative functions related to retirement benefits for retirees and their eligible surviving spouses or dependents formerly administered by the Bendix Field Engineering Corporation at the Grand Junction, Colorado facility under Contract No. DE-AC07-76GJ01664.

6.2 Qualified Defined Contribution Plan

Contractor funds contributed on behalf of participating employees, who cancel their participation in the plan or whose employment is terminated, which are not vested pursuant to the provisions of the plan, shall be used to offset the Contractor's contributions obligated to be made on behalf of other participants in the plan or to offset reasonable plan expenses if permitted by the plan. In the event this Contract with the Contractor is terminated, funds not committed to participants pursuant to provisions of the plans in effect at the National Security Campus shall be returned to DOE/NNSA.

7.0 Paid Time Off

The allowable costs for paid time off programs are as follows:

7.1 Holidays

- A. Costs are allowable for up to 13 holidays per calendar year. Because the calendar varies from year to year, the workdays designated by the contractor as paid holidays in any plan year may also vary.

- B. An employee who performs no work on a holiday(s) which fall(s) on the employee's regular day(s) off may be paid eight (8) hours or nine (9) hours pay at the employee's straight time base rate, plus shift premium, if applicable, for each such holiday.

7.2 Vacation

Vacation provides employees with paid time off from work to allow for personal time for rest, relaxation, and other employee needs or desires. Employees shall earn vacation on an "earn as you go" basis. Effective 4/1/2016, Employees will earn 1/12th of their annualized vacation entitlement based on the vacation schedule below. For the purposes of the calculation, an employee who works a single day in a calendar month will be treated as having been employed by the company for that entire month. All vacation is tracked and earned on a monthly basis. Employees may use their current year vacation entitlement at any time during the year. Payment upon termination is required for employees who separate from service after having taken more vacation than they earned through their termination date. Employees are allowed to carryover vacation based on the schedule below.

BAND 3 AND BELOW		
Service as of the Employees Service Date	Maximum Vacation	May Carry over up to
1 but less than 5 years	80 hrs.	80 hrs.
5 but less than 15 years	120 hrs.	120 hrs.
15 but less than 20 years	160 hrs.	160 hrs.
20 years or more	200 hrs.	200 hrs.
30 years or more	240 hrs.	240 hrs.
BAND 4 AND ABOVE VACATION SCHEDULE		
1 but less than 10 years	120 hrs.	120 hrs.
10 but less than 20 years	160 hrs.	160 hrs.
20 years or more	200 hrs.	200 hrs.
30 years or more	240 hrs.	240 hrs.

7.3 Payment for Absent Time

Paid absence is intended to provide limited salary continuance to eligible employees under very limited circumstances:

- The reason for the absence is of an urgent and compelling nature and affects the personal well-being of the employee.
- Only the amount of time necessary and reasonable to handle the obligation will be allowed.

- The matter cannot be handled outside the employee's normal working hours.
- The matter can be handled expediently only by the employee and not by another individual

Length of Service	Scheduled Workdays Paid Absence Allowance
Less than one year	Five days
One year but less than two years	Ten days
Two years but less than three years	Fifteen days
Three years of service and over	Twenty two days

Employees will be provided paid time off for a death within the immediate family if no paid absence allowance is available.

7.4 Jury and Witness Duty

Employees may be granted time off at the employee's regular pay during periods of absence due to jury or witness duty.

7.5 Service Credit and Leave Balances

The Contractor shall carry over the length of service credit and leave balances for Incumbent Employees accrued as of the date of the Base Term.

The service date of an employee is the date of hire or the date on which an employee began the most recent period of employment adjusted in accordance with applicable provisions set forth in this paragraph. An employee's service date shall be the basis for determining an employee's eligibility for and/or participation in benefit programs as set forth in this Personnel Appendix.

Recognition for service with a Parent Organization, as that term is defined in NNSA SD 350.1, of the performing entity will transfer to the Contractor for the items outlined in the chart below.

Benefit Available	Recognition for Service with Parent Organization NOT UNDER DOE or NNSA M&O or Site Management Control	Recognition for Service with Parent Organization UNDER DOE or NNSA M&O or Site Management Control
Eligibility for and accrual rate for vacation benefits	YES	YES
Eligibility for and accrual rate for sick leave and other leaves of absence	NO	YES
Eligibility for vesting and receipt of benefit for market-based retirement plans	YES	YES
Computing pension benefit in defined benefit pension plan	YES*	NO
Determination of severance benefits	YES	YES
Eligibility for retiree medical, dental and life insurance benefits	NO	YES
Eligibility and/or determination of benefit for long-and short-term disability	N/A	N/A

* To the extent the liabilities are reconciled and properly adjusted between plans on a periodic basis.

7.6 Military Leave of Absence

The Contractor shall submit a plan for a Military Leave of Absence for training that is consistent with the provisions established in 5 U.S.C. 6323. The Contractor shall submit a plan for active duty military leave that, at minimum, complies with all applicable provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA). Such plan shall be subject to Contracting Officer approval if it provides more benefits than are required by law.

A. Military Reserve Activation

In the event of a national emergency requiring an employee who is a member of any Army, Navy, Air Force, Marine Unit, Coast Guard,

National Guard or Merchant Marine Unit to be called to active duty, the Contractor shall be permitted to institute a limited duration military reserve activation policy with the approval of the President or Vice President and Contracting Officer approval.

7.7 Security Leave (Suspension of Access Authorization)

- A. If the access authorization of an employee is suspended by direction of the Contracting Officer, the Contractor shall transfer the employee to work not requiring access authorization if such work is available, without reducing the employee's base compensation. If the Contractor determines that no work is available in an uncleared area to which the employee may be transferred, the Contractor may prepare a written report, for the review and concurrence of the Contracting Officer that sets forth the reasons for the determination.
- B. Subject to the Contracting Officer's concurrence that no such work is available, the Contractor may place the employee on leave with pay at his/her base compensation. If an employee who is continuing to receive compensation, files a timely request for hearing pursuant to 10 CFR Part 710, such base compensation shall be continued until the Contractor receives notification in writing from the Contracting Officer of the Hearing Officer's recommendation.
- C. If the recommendation of the Hearing Officer is for revocation of access authorization, the Contractor may compensate the employee as set forth herein.
 - 1. In the event the employee was transferred to another position where such access authorization is not required, compensation may, thereafter, be the base compensation applicable to the new position, and such compensation shall continue until final disposition of the case under DOE procedures as set forth in 10 CFR Part 710.
 - 2. In the event a job transfer was not arranged (i.e., the employee was placed on a leave with pay), the employee shall be placed on leave without pay effective the date the Contractor received written notification of the Hearing Officer's recommendation. The employee shall remain on leave without pay until final disposition of the matter.
 - 3. If at any stage of the access authorization procedure following a suspension or at the conclusion of the administrative review process provided under 10 CFR Part 710, the employee's access authorization is reinstated by the Contracting Officer,

the Contractor will offer the employee reinstatement in the same or a comparable position to the one held prior to suspension, if available. The employee may be reimbursed for the difference between the employee's base wage or salary and actual earnings, including earnings from other employment, during the period of suspension.

4. If the recommendation of the Hearing Officer is to continue the administrative review process for revocation of access authorization, the employee's base compensation may be continued until a final decision is rendered by the Assistant Secretary for Defense Programs.

8.0 Training and Education

The training and education shall be directly related to the employee's current position or to another position to which the employee may reasonably be moved.

The Contractor shall establish written procedures outlining a system of approval for all requests for training and education. Such system shall provide an approval structure for in-house and outside training programs and educational assistance. Local colleges and universities will be utilized as primary sources.

8.1 Training

- A. Internal Training Programs - Internal training programs may include but are not limited to orientation, job training, supervisory training, and executive development. Such training programs may be conducted during employee's workday or after hours. Reasonable costs of in-house training including necessary equipment, materials, and instructor personnel are allowable.
- B. External Training Programs - Employees may be selected by the Contractor to participate in job related training courses, technical meetings, professional society meetings, seminars, conferences, and other specialized training courses away from the site(s) facilities. Allowable costs for such training courses may include employee's regular pay, travel and subsistence expenses, and the cost of tuition, fees, and course materials. Business travel and conference management shall be managed in accordance with the DOE/NNSA conference management requirements.

8.2 Education Program

- A. Executive Educational Program

Full-time exempt salaried employees are eligible to participate in an executive education program, not to exceed two school years. Individual

participation shall be limited to employees classified as Manager or higher and employees identified as promotable to such positions with the approval of the President or Vice President and NNSA notification of employees in the executive education program.

Payback is required if employee terminates or is discharged prior to completion of the program or within the 24-month commitment period which begins with the date of completion of the program.

B. Business Leader Fellowship Program

1. With the prior approval of the Contracting Officer or other authorized DOE offices, the Contractor may temporarily select FM&T employees to perform extended on the job training at locations and organizations other than standard FM&T operating sites. Such assignments may be to federal, state, and local government, non-profit organizations, private sector corporations – including corporate Honeywell, or other customers.
2. Such assignments will be in the best interest of the DOE and FM&T.
3. The term and scope of these assignments will be determined to best meet the needs and obligations of FM&T and the DOE but normally will be two years or less.
4. The terms and conditions of cost reimbursement will be requested in the submittal to the NNSA CO.
5. Employees on temporary assignment remain full-time employees of FM&T.
6. Payback is required for expenses paid under the program, to include either relocation or M&IE and lodging if employee terminates or is discharged prior to completion of the program or within the 24-month commitment period which begins with the employees return to the business after the assignment.
7. See Business Leader Fellowship Program overview for additional details.

C. Educational Assistance Allowances

1. All salaried employees may be eligible for reimbursement of educational assistance allowances to include the cost of tuition, textbooks, technical fees, computer fees and laboratory fees for approved courses. Employees on educational leave of absence are not eligible for Educational Assistance. All payments are subject to the following conditions:

Courses must be:

- (1) Related to an employee's current position or to another position within the Contractor's organization to which the employee may reasonably be moved, related to a degree program with a direct relationship to the employee's career path with the Contractor.
 - (2) Conducted by recognized colleges or universities, or educational institutions accredited by nationally recognized agencies or associations (e.g., correspondence course, technical and trade courses).
2. Each course undertaken by the employee shall be approved by a member of management and a human resource representative. The files of the Contractor shall contain a statement showing the basis for the conclusion that courses approved meet the criteria stated above.
3. Courses must be taken outside of the employee's scheduled working hours, except that courses may be taken during the employee's scheduled working hours provided the following conditions exist:
 - (1) The course of study is not available outside working hours;
 - (2) The course of study is required for graduation and/or for completion of the educational objective; and
 - (3) Time off from work is made up at a time convenient to the Contractor at no additional cost. Such time off from work is not considered as hours worked for purposes of computing overtime.
4. The cost of instruments, equipment, supplies, software, and other such items connected with instruction will be excluded from reimbursement. In addition, fees for parking, student activities, health services, graduation, and pre-enrollment examination will be excluded from reimbursement.

5. In the case of full or partial reimbursement for educational costs by an outside source only, the amount not provided by the third-party which is allowable under the provisions of this contract, may be reimbursed.
6. The allowance may be reimbursed to the employee upon successful completion of each semester, quarter, session, or term.
7. Payment will be withheld if any one or more of the following conditions occur:
 - (1) Employee terminates prior to completion of the course as a result of a quit or discharge.
 - (2) Employee withdraws from the course for personal reasons. An employee withdrawing from a course for reasons caused by a decision of the Contractor's management or other extenuating circumstances will be relieved of all obligations to repay tuition and fees upon approval of the Contractor's Director of Human Resources or a designated representative.
 - (3) Employee fails to submit evidence that a course was satisfactorily completed with the equivalent of the grade "C" or higher within six (6) months after the term has ended.
 - (4) An agreement shall be obtained from each participating employee permitting such recovery or withholding.
8. If an Employee voluntarily leaves or is discharged for "cause" within one-year following a reimbursement under this Policy such Employee will be required to repay 100% of the reimbursements received within the 12 month period immediately preceding the Covered Employee's last day of active employment. Reimbursements must be paid in full upon termination.

D. Technical Fellowship Program

1. Employees with science or engineering degrees are eligible to participate in a Technical Fellowship Program to pursue advanced degrees in areas identified as technical skill gaps or critical skill positions for completion of the Contractor's mission. Employees will be permitted time off work to participate in the program, and may pursue their advanced degree on either a full-time or part-time basis. Employees in the program on a part-time basis will be considered full-time employees under this Personnel Appendix.

2. Allowable costs for the program consist of:
 - (1) Salaries earned while participating in the program. Full-time students in the program will receive 70% of their base salary, determined on the day they enter the program, during the length of their participation in the program. Students may be eligible for a compensation rate adjustment upon program completion.
 - (2) Fringe benefits provided to the program participants as stated elsewhere in Personnel Appendix. Full-time students in the program will not be eligible for vacation or paid absence benefits but will be awarded full vacation allowance upon completion of the program.
 - (3) Time off from work for activities associated with the program. Allowable costs shall consist of the full cost of entrance exams, tuition, registration fees, laboratory fees, textbooks, thesis preparation and reproduction, and any other costs associated with the program.
 - (4) Travel and relocation expenses pursuant to Part V of this Personnel Appendix.
3. Should participants voluntarily terminate employment or are discharged for cause they will be required to repay any program costs covered by FM&T equaling:
 - (1) 100% within 1 year following the program
 - (2) 75% within 2 years following the program
 - (3) 50% within 3 years following the program

The service commitment period begins upon completion of the degree or the participant's withdrawal from the program.

4. The program will be administered pursuant to a written policy. The policy, and any changes, will be submitted to NNSA.

9.0 Travel, Relocation, and Subsistence

The Contractor may pay transportation, lodging, meals, and incidental expenses for employees required to travel in conjunction with the performance of work under this Contract. Travel costs shall be allowable to the extent they are incurred in accordance with the FAR, DEAR, and Federal Travel Regulations (FTR) and do not exceed the maximum per diem rates in effect at the time of travel set forth in the FTR, prescribed by the General Services Administration.

The Contractor may deviate from this Appendix in specific instances where it is determined and approved by the Contracting Officer to be economically advantageous to DOE/NNSA and to the extent such deviations conform to regulations and law.

Relocation expenses shall be incurred in accordance with the provisions, limitations and exclusions of FAR. Relocation provisions are applicable to Salaried Employees and are allowable and will be reimbursed in accordance with the Federal Travel Regulation.

10.0 Recruiting, Employee Orientation and Referrals

The costs of recruitment of personnel including cooperative education programs, summer internship programs, nominal costs for promotional items for recruitment purposes, employment advertising, services of staffing sourcing vendors, services of employment agencies at rates not in excess of standard commercial rates, participation in corporate recruiting activities, campus recruiting, career fairs, and operation of recruiting stations are allowable.

10.1 Recruitment

- A. Reasonable actual costs of housing for personnel in summer internship programs will be allowed up to \$5,800 per intern.
- B. The Contractor may authorize a spouse or domestic partner to accompany the applicant reporting for a pre-employment interview. This will apply on a selective and invitational basis to internal and external applicants for positions in exempt salary band 3 and above. When the applicant's spouse or domestic partner is so authorized to travel, the cost of transportation expenses incurred by the spouse or domestic partner shall be allowable and the reasonable, actual costs of lodging and subsistence expenses shall be allowable. Applicants may, at the discretion of the Contractor, be authorized to stay up to two (2) nights during their pre-employment interview to meet with a relocation services company to participate in a pre-employment relocation program. When the applicant's spouse, or domestic partner, is so authorized to travel, the cost of transportation expenses, actual cost of lodging and subsistence expenses incurred by the spouse, or domestic partner, shall be allowable.

10.2 Employee Referral Program

- A. The contractor may establish an Employee Referral Program (ERP). The program may reimburse any Honeywell employee, including persons not employed under this contract. Ineligible employees include employees or managers who have direct responsibility for the actual hiring decision for the specific job being filled, all Human Resources staff who have direct responsibility for staffing and band 5 Senior Managers. Not all openings are designated for an Employee Referral reward. Final decisions on reward eligibility are subject to the approval of the Director of Human

Resources for FM&T.

- B. Award amounts will vary depending on the position filled, but will not exceed \$1,500. The amount will be based upon the highly specialized or high demand critical skills required. Other factors include the level of difficulty expected to identify qualified candidates due to labor shortages for the high demand skill. The reward amounts are identified within the job posting system.

10.3 Pre-Employment Interview

Applicants who are requested by the Contractor to report for a pre-employment interview shall be allowed transportation expenses. Reasonable actual costs of lodging not to exceed per diem and meals and incidental expenses (M&IE) shall be allowed.

11.0 Special Employee Activities

11.1 Recreation and Morale Building Benefits

A recreation and morale building program as determined by the Contractor may be allowed. The purpose of the Contractor's Culture Club is to increase employee morale and promote diversity, safety, and volunteerism. Contractor activities administered within the Culture Club may include the support and planning of the following: company sports leagues and events, annual events and company gatherings, special celebrations, merchandise and displays, educational programs, the employee volunteer community service programs, and some rewards and recognition acknowledgements. These items are considered employee relations, welfare and morale expenses.

A. Culture Club Funding

1. The amount to be expended annually by the Contractor on a fiscal year basis shall not exceed \$39 multiplied by the annual average number of employees under this contract.
2. The annual average number of employees for purposes of determining the annual maximum allowable expenditure under Community Programs of this Personnel Appendix, shall be calculated by totaling the number of employees on the payroll register at the end of each calendar month and dividing such total by twelve.

11.2 Medical Facilities

- A. Medical facilities shall be provided for care of Contractor and NNSA employees in the event of occupational injuries, to provide treatment while at work for minor physical complaints of employees, and to provide health examinations as outlined below. In the case of ailments which are not attributed to the employee's occupation and the condition of the employee is such that the ailment extends beyond a limited period, such employee shall be advised to contact his/her own physician. The medical facility will be adequately staffed with physicians, registered nurses, technicians, and clerical personnel.
- B. Health examinations may be provided for post-offer prospective employees and for other employees of the Contractor with such frequency and upon such basis as deemed necessary by the Contractor or as mandated by NNSA.
- C. Treatment may be provided for subcontractor employees working at the National Security Campus who are injured at the Plant and require emergency care. (Non-emergency work-related injuries are treated off-site under the control of the subcontractor.)

11.3 Miscellaneous Employee Benefits and Services

- A. Employee Services.

The following miscellaneous employee benefits and services may be provided:

- Plant cafeterias and vending machines
- Automatic Teller Machines (ATM)
- Notary services (fees and bonds).
- Safety clothing and equipment.
- Employee handbooks and similar information or instructional material for distribution to employees or prospective employees.
- Fees for examinations, certifications or licenses if required by governmental regulation(s), by DOE order(s) or by written directive from the Contracting Officer, or if incidental to an approved course in this Personnel Appendix
- Administrative activities to enhance employee morale including the sale and distribution of items of company identification.
- Items of nominal expense, with or without the company logo, designed to promote awareness of workplace issues.

- B. Light Refreshments

Reasonable expenditures for refreshments such as pastries, coffee and soft drinks are specifically allowable under the following circumstances:

- As part of FM&T sponsored training programs whether conducted on or offsite
- As part of reward and recognition ceremonies, including but not limited to patent award ceremonies
- In connection with meetings involving plant guests.

C. Interview/Recruiting Meals

For job interviews, meals for the interviewer and interviewee are an allowable cost, as a per diem charge, when both are in valid travel status. If either party is not in travel status, the cost of that party's meal would be unallowable, unless a very strong justification is provided that demonstrates the meal is a necessary part of the recruitment process (for example, the scheduled interviews extend over normal meal break times or the interview takes place during the meal) and not simply a social activity or diversion from the interview process.

Reasonable actual costs of food related items incurred during the recruitment of personnel and activities with interns shall be allowed. Documentation shall include the rationale used to determine the meal was an integral part of the recruiting event. In all cases, documentation should include the names of all participants in the meal and an indication of whether each individual is a Honeywell FM&T employee or a guest. If a meal involves more than 15 participants, a description of the particular group and number of participants is acceptable.

11.4 Defense of Employees Involved in Work-Related Claims and Legal Actions

1. If a claim or legal action is brought against an employee as the result of the employee's conduct when performing duties under this contract and within the employee's scope of employment, the Contractor shall be allowed the cost of representing and defending the employee, including appeals and costs of any judgment; provided, however, that the prior approval of the Contracting Officer and the consent of the employee to be defended shall be obtained before any such defense is undertaken.
2. The provisions of the contract clause entitled, "Insurance - Litigation and Claims" shall have the same application to claims and legal actions against employees under this section as it has to those claims and legal actions which are brought directly against the Contractor. Before costs of any retained legal counsel may be allowed, the selection of such counsel must have the concurrence of the Contracting Officer.
3. When involved in any claim or legal action covered by this section, an

employee may, with the prior approval of the Contracting Officer, be allowed time off with base pay on scheduled workdays for consultation with counsel, trial attendance and such other matters as are reasonably incident to the claim or legal action.

11.5 Outplacement Assistance Program for Displaced Workers

The costs of establishing and maintaining an Outplacement Assistance Program covering Contractor employees who may be or have been separated from employment in connection with a work force reduction resulting from the downsizing of national defense activities are allowable. The Outplacement Assistance Program may include continuing access to the Employee Assistance Program as provided in this Personnel Appendix, for two (2) years after separation. The employees affected by the restructuring or downsizing activities can receive counseling and assessment for future employment opportunities.

11.6 Employee Recognition Programs

- A. The Contractor is authorized to implement an Employee Recognition Program. The total cost of this program shall not exceed ¼% of total gross base payroll per calendar year.
- B. Issued Patent Awards - A discretionary memento, such as a plaque or medallion will be presented to inventors for U.S. patents issued during the preceding year. A portrait of each inventor will be made and displayed for recognition.
- C. Patent Award Procedure - The memento referred to above will be presented to the employee at a recognition ceremony following issuance of the patent.

11.7 Length of Service Awards

Any employee who has attained at least ten (10) years of credited service with the Contractor may be eligible for a service award. Such employees may be eligible for an additional service award on the anniversary date of each additional ten years of credited service as well as a retirement award upon retirement. The conferring of awards shall be in accordance with the schedule and price ranges approved by the Contracting Officer. Such schedule shall designate the price range of the awards which may be selected by each eligible employee based upon length of service.

Revisions to the schedule of price ranges may be made from time to time with the prior approval of the Contracting Officer.

The Contractor shall furnish the Contracting Officer with a cost summary of the Service Award Program as soon as practicable after the end of each fiscal year.

11.8 Adoption Program

The Contractor may establish an adoption program for all full and part-time employees. Costs associated with this program will be allowable to the following extent:

- Reimbursement up to \$5,000 per child for qualified adoption-related expenses;
- Adoption of a "special needs" child will provide for reimbursement of up to \$10,000 per adopted child;
- Four weeks paid leave during the 12-month period following adoption of the child(ren); and
- Benefit coverage continuance as for any other leave of absence.

12.0 Community Outreach

The Contractor may authorize employees to participate in educational and community outreach in accordance with their Community Outreach Plan approved by the Contracting Officer. The salaries, wages, and fringe benefits of employees while engaged in such approved activities will be treated as allowable costs. Educational and community outreach does not include activities conducted by elected and officially appointed officials that take place during an employee's regularly scheduled work day. Hours associated with educational and community outreach outside of the employee's normal work schedule shall not be compensated by the Contractor. The Contractor shall submit a report annually, no later than November 1, to the Contracting Officer on the types of usage and number of hours authorized. Some examples of permissible educational and community outreach include, but are not limited to:

- Promotion of Science, Technology, Engineering, and Mathematics in the educational setting (elementary school through higher education institutions)
- Science Bowl and Science Fairs
- Blood bank drives
- Charity drives
- United Way campaigns
- Disaster Assistance
- Outreach program
- Equal Opportunity Activities
- Community Assistance Programs

The cost of meals for Contractor employees attending banquets associated with such activities, and materials used to support community service activities, exclusive of Contractor cash contributions and donations, are allowable.

Fiscal Year 2018
DOE/NNSA Strategic Performance Evaluation and Measurement Plan (PEMP)


Honeywell Federal Manufacturing and Technologies

MANAGEMENT AND OPERATION OF THE

Kansas City National Security Campus

Contract Number: DE-NA0002839


Performance Evaluation Period: October 01, 2017 through September 30, 2018




John Ricciardelli
President
Honeywell FM&T
Date



Mark Holecek
Field Office Manager
Kansas City Field Office
National Nuclear Security Administration
Date 9/28/17



Kaniah W Konkoly-Thege
General Counsel
Honeywell FM&T
Date 9/27/17



Hilary A. Cole
Contracting Officer
Kansas City Field Office
National Nuclear Security Administration
Date 9/28/17

FY 2018 Performance Evaluation and Measurement Plan

Document Revision History

Revision	Date	Change Description
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INTRODUCTION

The Kansas City National Security Campus (KCNSC) is a Government leased facility, owned by the U.S. Government, under the custody of the Department of Energy's (DOE) National Nuclear Security Administration (NNSA), herein referenced as "the plant," and is managed and operated by Honeywell Federal Manufacturing and Technologies (FM&T). Pursuant to the terms and conditions of the Contract, this NNSA Performance Evaluation and Measurement Plan (PEMP) sets forth the criteria by which NNSA will evaluate Honeywell FM&T performance and the basis for determining the amount of award fee earned. The available award fee amounts for FY 2018 are specified in Section B, *Supplies or Services and Prices/Costs*, of the contract. This PEMP promotes a strategic Governance and Oversight framework based on prudent management of risk, accountability, transparency, and renewed trust. It implements the collective governance and oversight reform principles as expressed NNSA.

PERFORMANCE BASED APPROACH

The performance-based approach evaluates the Honeywell FM&T performance through a set of Goals. Each Goal, and its associated Objectives, and Key Outcomes (KOs), will be measured against authorized work in terms of cost, schedule, and technical performance, and the respective outcomes, demonstrated performance, and impact to the DOE/NNSA mission.

MISSION

The objective of this Contract is to obtain non-nuclear production services to support National Nuclear Security Administration (NNSA) and broader national security requirements. Honeywell FM&T shall be fully responsible for functions to support NNSA Stockpile Stewardship and Management Program activities directed by the Office of Defense Programs (DP). Furthermore, Honeywell FM&T shall directly support the NNSA Offices of Safeguards Transportation and Nuclear Non-Proliferation in addition to other Department of Energy (DOE) offices. Beyond DOE/NNSA, Honeywell FM&T shall provide services to ongoing missions for other Government agencies or privately owned organizations in accordance with policies identified in the operating requirements.

MISSION PERFORMANCE

FM&T is accountable for and will be evaluated on successfully executing program work in accordance with applicable DOE/NNSA safety and security requirements consistent with the terms and conditions of the Contract. Protection of worker and public safety, the environment, and security are essential and implicit elements of successful mission performance. Accordingly, Honeywell FM&T shall plan safety and security improvements and accomplishments as an integral component of mission performance contributing to meeting the affected programmatic Goals. The model for this PEMP is to rely on The Plant's leadership to use appropriate DOE contractual requirements and recognized industrial standards based on consideration of assurance systems, and the related measures, metrics, and evidence. **FM&T is expected to manage in a safe, secure, efficient, effective, results-driven manner, with appropriate risk management and transparency to the government, while taking appropriate measures to minimize costs that do not compromise core objectives and mission performance.** Products and services are expected to be delivered on-schedule and within budget.

CONSIDERATION OF CONTEXT IN PERFORMANCE EVALUATION

The evaluation of performance will consider "context" such as unanticipated barriers (e.g., budget restrictions, rule changes, circumstances outside FM&T's control), degree of difficulty, significant accomplishments, and other events that may occur during the performance period. A significant safety or security event may result in an overall limitation to adjectival ratings. Such impacts may be balanced by the response to the incident, and by other initiatives to improve overall safety or security performance. FM&T is encouraged to note significant safety and security continuous improvements.

PERFORMANCE RATING PROCESS

DOE/NNSA will review performance throughout the performance evaluation period, and provide tri-annual feedback to FM&T highlighting successes and/or needed improvement. At the end of the performance evaluation period, an evaluation of FM&T's performance will be completed. This evaluation will be documented in a Performance Evaluation Report (PER), and will include the performance ratings and award fee earned for the subject performance evaluation period. Objectives and Key Outcomes (KOs) will be assessed in the aggregate to determine an adjectival performance rating for each Goal. DOE/NNSA will consider FM&T's end of year self-assessment report in the performance evaluation. The performance ratings will be determined in accordance with FAR 16.401(e) (3) yielding ratings of Excellent, Very Good, Good, Satisfactory or Unsatisfactory. The Goals will then be considered in the aggregate to provide an overall rating and percentage of award fee earned for the contract. Notwithstanding the overall strategic framework, any significant failure may impact the overall rating and award fee earned. The fee Determining Official's (FDO) award fee determination is a unilateral decision made solely at the discretion of NNSA.

FM&T may request a face-to-face meeting with the FDO to highlight their site's strategic performance at the end of the performance evaluation period. This meeting should occur within the first two weeks after the end of the period.

PEMP CHANGE CONTROL

It is essential that a baseline of performance expectations be established at the beginning of the performance period to equitably measure performance, and that changes to that baseline are carefully managed. Any change to the PEMP requires concurrence by the appropriate program office and the NNSA Senior Procurement Executive prior to the Field Office Manager and Contracting Officer signatures. While recognizing the unilateral rights of DOE/NNSA as expressed in the contract terms and conditions, bilateral changes are the preferred method of change whenever possible.

TOTAL AVAILABLE AWARD FEE ALLOCATION

Goal	% At-Risk Fee Allocation
Goal-1: Manage the Nuclear Weapons Mission	45%
Goal-2: Reduce Nuclear Security Threats	10%
Goal-3: DOE and Strategic Partnership Projects Mission Objectives	2.5%
Goal-4: Science, Technology, and Engineering (ST&E)	2.5%
Goal-5: Operations and Infrastructure	25%
Goal-6: Leadership	15%

UNEARNED FEE

DOE/NNSA reserves the right to withdraw and redistribute DOE/NNSA unearned fees.

INNOVATIVE SOLUTIONS

FM&T will recommend innovative, technology/science-based, systems-engineering solutions to the most challenging problems that face the nation and the globe. FM&T will also provide evidence to support programmatic needs and operational goals tempered by risk. DOE/NNSA will take into consideration all major functions including safety and security contributing to mission success. In addition, DOE/NNSA expects FM&T to recommend and implement innovative business and management improvement solutions that enhance efficiencies.

Goal-1: Manage the Nuclear Weapons Mission

Successfully execute Nuclear Weapons mission work in a safe and secure manner in accordance with DOE/NNSA Priorities, Program Control Document and Deliverables, and Program Implementation Plans, and Weapon Quality Assurance Requirements. Integrate across the KCNSC, while maintaining a DOE/NNSA enterprise-wide focus, in order to achieve greater impact on a focused set of strategic national security priorities.

Objectives:

- Objective-1.1 Accomplish work as negotiated with program sponsors and partners integrating quality requirements into an effective Quality and Nuclear Enterprise Assurance program at their sites and through their suppliers that results in the design, production, and delivery of safe, secure, and reliable weapon products meeting performance, transportation, and cost effective operations.
- Objective-1.2 Maintain knowledge of the state of the stockpile, resulting from successful execution of the stockpile surveillance program and a robust scientific and engineering understanding for the delivery of the annual stockpile assessment.
- Objective-1.3 Execute stockpile work to deliver stockpile system maintenance, production, limited-life component exchanges, weapon containers and dismantlements.
- Objective-1.4 Apply innovative strategies and technologies, and sustain science and engineering capabilities, facilities and skills to support existing and future nuclear security enterprise requirements.
- Objective 1.5 Execute Phase 6.X, product realization processes and activities in support of nuclear weapon life extension programs, modification and alterations in accordance with NNSA requirements, Nuclear Weapons Council guidance, and NNSA project control processes to 1) integrate schedules; 2) lower risks; 3) control costs; and 4) control change.

Key Outcome(s):

- KO-1.1 Quality Performance Scorecard: Achieve quality performance metrics as described in the KCFO Quality Performance Scorecard Definition.
- KO-1.2 Execute the following Weapon Quality Assurance initiatives:
 - Implement continuous improvement projects to correct identified systemic weapon product/process defects (nonconformance).
 - Continue supplier quality management improvements that ensure validation of procured weapon product to design and quality requirements.

Goal-2: Reduce Nuclear Security Threats

Successfully execute authorized global nuclear security mission work in a safe and secure manner to include the Defense Nuclear Nonproliferation, Nuclear Counterterrorism, and Counter Proliferation and Incident Response missions. Integrate across the NNSA enterprise to achieve greater impact on a focused set of strategic national security priorities.

Objectives:

- Objective-2.1 Support efforts to secure, account for, and interdict the illicit movement of nuclear weapons, weapons-useable nuclear materials and radiological materials.
- Objective-2.2 Support U.S. national and nuclear security objectives in reducing global nuclear security threats through the innovation of unilateral and multi-lateral technical capabilities to detect, identify, and characterize: 1) foreign nuclear weapons programs, 2) illicit diversion of special nuclear materials, and 3) global nuclear detonations.
- Objective-2.3 Support efforts to achieve permanent threat reduction by managing and minimizing excess weapons-useable nuclear materials and providing nuclear materials for peaceful uses.
- Objective-2.4 Support efforts to prevent proliferation, ensure peaceful nuclear uses, and enable verifiable nuclear reductions in order to strengthen the nonproliferation and arms control regimes.
- Objective-2.5 Sustain and improve nuclear counterterrorism and counterproliferation science, technology, and expertise; execute unique emergency response missions, implement policy in support of incident response and nuclear forensics missions, and assist international partners/ organizations.

Key Outcome(s):

- KO-2.1 Field Operations – Support Stabilization new city deployments and existing city sustainment trainings. Provide planning for national level Render Safe exercises as well as watch bill support for national level Render Safe and Forensics exercises.
- KO-2.2 Readiness – Procure and/or manufacture tools and equipment for use in counterterrorism and accident missions. Provide equipment management and depot operations for Stabilization, Render Safe and DFO (DOE Forensics Operations) missions.
- KO-2.3 Technology Development – Propose new tools, processes, procedures and/or concepts that would enhance the capability or efficiency of the missions, and participate in the Technical Integration (TI) programs.

Goal-3: DOE and Strategic Partnership Project Mission Objectives

Successfully execute high-impact work for DOE and Strategic Partnership Project Mission Objectives safely and securely. Demonstrate the value of the work in addressing the strategic national security needs of the U.S. Government.

Objectives:

Objective-3.1 Pursue and perform high-impact work for DOE that strategically integrates with the DOE/NNSA mission, and leverages, sustains and strengthens unique science and engineering capabilities, facilities and essential skills.

Objective-3.2 Pursue and perform high-impact Strategic Partnership Projects that strategically integrates with the DOE/NNSA mission, and leverages, sustains and strengthens unique science and engineering capabilities, facilities and essential skills in support of national security mission requirements.

Goal-4: Science, Technology, and Engineering (ST&E)

Successfully advance national security missions and advance the frontiers of ST&E. Effectively manage Kansas City National Security Campus Plant Directed Research and Development (PDRD) and Technology Transfer programs to advance the frontiers of ST&E.

Objectives:

- Objective-4.1 Execute a research strategy that is clear and aligns discretionary investments (e.g., (PDRD)) with KCNSC strategy and supports DOE/NNSA priorities.
- Objective-4.2 Ensure that research is relevant, enables the national security missions, and benefits DOE/NNSA and the nation.
- Objective-4.3 Maintain a healthy and vibrant research environment that enhances technical workforce competencies and research capabilities.
- Objective-4.4 Research and develop high-impact technologies through effective partnerships and technology transfer mechanisms that support the KCNSC strategy, DOE/NNSA priorities and impact the public good; ensure that reporting and publishing (via DOE's Public Access Plan) requirements for broad availability of federally funded scientific research are implemented.

Goal-5: Operations and Infrastructure

Effectively and efficiently manage the safe and secure operations of the KCNSC while maintaining an NNSA enterprise-wide focus; demonstrating accountability for mission performance and management controls; and assure mission commitments are met with high-quality products and services while partnering to improve the site infrastructure.

Objectives:

- Objective-5.1 Deliver effective, efficient, and responsive environment, safety, health and quality (ESH&Q) management and processes.
- Objective-5.2 Accomplish capital projects in accordance with scope, cost, and schedule baselines.
- Objective-5.3 Deliver effective, efficient, and responsive safeguards and security. Deliver effective site emergency management programs in support of the DOE/NNSA Emergency Management Enterprise.
- Objective-5.4 Manage NNSA infrastructure to maintain, operate and modernize DOE/NNSA facilities, infrastructure, and equipment in an effective, energy efficient manner that minimizes operational, security, and safety risks.
- Objective-5.5 Deliver efficient, effective, and responsible business operations, systems and financial management, including financial transparency; budget formulation and execution; and, internal controls.
- Objective-5.6 Deliver efficient and effective management of legal risk and incorporation of best legal practices.
- Objective-5.7 Deliver effective, efficient, and responsive information technology systems and cyber security.

Key Outcome(s):

- KO-5.1 Improve contractor oversight processes to ensure comprehensive and accurate reporting, timely identification and correction of issues, including metrics that provide accurate, meaningful, and timely information concerning the health of the security program. Implement consistent tools for conducting site assessments with a risk management strategy.

Goal-6: Leadership

Successfully demonstrate leadership in supporting the direction of the overall DOE/NNSA mission, cultivating a Performance Excellence Culture that encompasses all aspects of operations and continues to emphasize safety and security, improving the responsiveness of FM&T's leadership team to issues and opportunities for continuous improvement internally and across the Enterprise, and parent company involvement/commitment to the overall success of the KCNSC and the Enterprise.

Objectives:

- Objective-6.1 Define and implement a realistic strategic vision for the Kansas City National Security Campus, in alignment with the NNSA Strategic Vision, which demonstrates enterprise leadership and effective collaborations across the NNSA enterprise to ensure DOE/NNSA success.
- Objective-6.2 Demonstrate performance results through the institutional utilization of a Contractor Assurance System and promoting a culture of critical self-assessment, timely corrective action, transparency, and accountability through the entire organization, while also leveraging parent company resources and expertise.
- Objective-6.3 Demonstrate leadership engagement in integrating Nuclear Security Enterprise (NSE) activities; enhancing cooperation and problem solving among NSE elements; and incorporating best practices and lessons learned from other NSE elements.
- Objective-6.4 Exhibit professional excellence in performing roles/responsibilities while pursuing opportunities for continuous learning.

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

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Notice: *Clauses incorporated by reference.*

A. FAR CLAUSES INCORPORATED BY REFERENCE

The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1). The following FAR clauses are hereby incorporated by reference:

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.203-3	Gratuities	Apr 1984
52.203-5	Covenant Against Contingent Fees	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	Sep 2006
52.203-7	Anti-Kickback Procedures	May 2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Oct 2010
52.203-13	Contractor Code of Business Ethics and Conduct	Apr 2010
52.203-14	Display of Hotline Poster(s) <i>(b)(3) Required poster is: 'DOE Hotline Poster</i> http://ig.energy.gov/hotline.htm <i>'</i>	Dec 2007
52.203-16	Preventing Personal Conflicts of Interest	Dec 2011
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	Apr 2014
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	May 2011
52.204-9	Personal Identity Verification of Contractor Personnel	Jan 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Oct 2016
52.204-18	Commercial and Government Entity Code Maintenance	Nov 2014
52.204-13	System for Award Management Maintenance	Oct 2016

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Aug 2013
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	Jul 2013
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	Dec 2014
52.210-1	Market Research	Apr 2011
52.211-5	Material Requirements	Aug 2000
52.215-2	Audit and Records -- Negotiation	Oct 2010
52.215-8	Order of Precedence -- Uniform Contract Format	Oct 1997
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	Aug 2011
52.215-12	Subcontractor Certified Cost or Pricing Data	Oct 2010
52.215-13	Subcontractor Certified Cost or Pricing Data -- Modifications	Oct 2010
52.215-15	Pension Adjustments and Asset Reversions	Oct 2010
52.215-17	Waiver of Facilities Capital Cost of Money	Oct 1997
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	Jul 2005
52.215-19	Notification of Ownership Changes	Oct 1997
52.215-22	Limitations on Pass-Through Charges—Identification of Subcontract Effort	Oct 2009
52.215-23	Limitations on Pass-Through Charges	Oct 2009
52.217-8	Option to Extend Services	Nov 1999
52.219-8	Utilization of Small Business Concerns	Nov 2016
52.219-9	Small Business Subcontracting Plan	Jan 2017
52.219-16	Liquidated Damages -- Subcontracting Plan	Jan 1999
52.222-1	Notice to the Government of Labor Disputes	Feb 1997
52.222-3	Convict Labor	Jun 2003

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.222-4	Contract Work Hours and Safety Standards Act -- Overtime Compensation	May 2014
52.222-20	Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000	May 2014
52.222-21	Prohibition of Segregated Facilities	Feb 1999
52.222-26	Equal Opportunity	Mar 2007
52.222-29	Notification of Visa Denial	Jun 2003
52.222-35	Equal Opportunity for Veterans	Jul 2014
52.222-36	Equal Opportunity for Workers With Disabilities	Jul 2014
52.222-37	Employment Reports on Veterans	Jul 2014
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	Dec 2010
52.222-50	Combating Trafficking in Persons	Feb 2009
52.222-54	Employment Eligibility Verification	Aug 2013
52.223-2	Affirmative Procurement of Biobased Products Under Service And Construction Contracts	Sep 2013
52.223-3	Hazardous Material Identification and Material Safety Data, Alternate I (Jul 1995) <i>(b) Nothing identified to date.</i>	Jan 1997
52.223-5	Pollution Prevention and Right-to-Know Information, Alternate I (May 2011)	May 2011
52.223-6	Drug Free Workplace	May 2001
52.223-10	Waste Reduction Program	May 2011
52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.	June 2016
52.223-15	Energy Efficiency in Energy-Consuming Products	Dec 2007
52.223-16	Acquisition of EPEAT® -Registered Personal Computer Products Alt I (Jun 2014)	Jun 2014
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts	May 2008
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	Aug 2011

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.223-19	Compliance With Environmental Management Systems	May 2011
52.223-20	Aerosols	June 2016
52.223-21	Foams	June 2016
52.223-22	Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation	Dec 2016
52.224-1	Privacy Act Notification	Apr 1984
52.224-2	Privacy Act	Apr 1984
52.225-1	Buy American—Supplies	May 2014
52.225-8	Duty-Free Entry	Oct 2010
52.225-13	Restriction on Certain Foreign Purchases	Jun 2008
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	Jun 2000
52.227-10	Filing of Patent Applications -- Classified Subject Matter	Dec 2007
52.229-8	Taxes -- Foreign Cost-Reimbursement Contracts <i>(a) Name of foreign government is 'the foreign country(ies) referenced in the applicable Work Authorization or as specified by the Contracting Officer'. Name of country is 'exempt under the laws of 'the Country(ies) referenced in the applicable Work Authorization or as specified by the Contracting Officer'.</i>	Mar 1990
52.230-2	Cost Accounting Standards	Oct 2015
52.230-6	Administration of Cost Accounting Standards	Jun 2010
52.232-17	Interest	May 2014
52.232-18	Availability of Funds	Apr 1984
52.232-24	Prohibition of Assignment of Claims	May 2014
52.233-1	Disputes, Alternate I (Dec 1991)	May 2014
52.233-3	Protest After Award, Alternate I (Jun 1985)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	Oct 2004
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	Apr 1984
52.237-3	Continuity of Services	Jan 1991

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.242-1	Notice of Intent to Disallow Costs	Apr 1984
52.242-13	Bankruptcy	Jul 1995
52.242-15	Stop-Work Order, Alternate I (Apr 1984)	Aug 1989
52.244-2	Subcontracts, Alternate I (Jun 2007)	Oct 2010
52.244-5	Competition in Subcontracting	Dec 1996
52.244-6	Subcontracts for Commercial Items	Jan 2017
52.247-1	Commercial Bill of Lading Notations <i>(a) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'. (b) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'. Contract No. is DE-NA0002839. Contact is 'the Contracting Officer'.</i>	Feb 2006
52.247-63	Preference for U.S.-Flag Air Carriers	June 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	Feb 2006
52.249-6	Termination (Cost-Reimbursement)	May 2004
52.249-14	Excusable Delays	Apr 1984
52.251-1	Government Supply Sources	Apr 2012
52.251-2	Interagency Fleet Management System Vehicles and Related Services	Jan 1991
52.253-1	Computer Generated Forms	Jan 1991

B. DEAR CLAUSES INCORPORATED BY REFERENCE (MODIFIED 0017)

The references cited herein are from the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). The following DEAR clauses are hereby incorporated by reference:

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
952.203-70	Whistleblower Protection for Contractor Employees	Dec 2000
952.204-70	Classification/Declassification	Sep 1997
952.204-71	Sensitive Foreign Nations Controls	Mar 2011
952.204-75	Public Affairs	Dec 2000

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
952.204-77	Computer Security	Aug 2006
952.208-7	Tagging of Leased Vehicles	Apr 1984
952.209-72	Organizational Conflicts of Interest, Alternate I <i>(b)(1)(i) Period is 'five (5) years'.</i>	Aug 2009
952.211-71	Priorities and Allocations (ATOMIC ENERGY)	Apr 2008
952.215-70	Key Personnel <i>(a) Cross-reference is 'Section J, Appendix G.'</i>	Dec 2000
952.217-70	Acquisition of Real Property	Mar 2011
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	Apr 1984
952.223-78	Sustainable Acquisition Program	Oct 2010
952.226-74	Displaced Employee Hiring Preference	Jun 1997
952.227-82	Rights to Proposal Data (MOVED TO FULL TEXT AS CLAUSE I-26 BY MOD 0017)	Apr 1994
952.235-71	Research Misconduct	Jul 2005
952.242-70	Technical Direction	Dec 2000
952.247-70	Foreign Travel	Jun 2010
952.251-70	Contractor Employee Travel Discounts	Aug 2009
970.5203-1	Management Controls	Jun 2007
970.5203-2	Performance Improvement and Collaboration	May 2006
970.5204-1	Counterintelligence	Dec 2010
970.5204-3	Access to and Ownership of Records <i>Paragraph (b): All of the categories (1) - (5) of records are included in the clause.</i>	Oct 2014
970.5208-1	Printing	Dec 2000
970.5211-1	Work Authorization	May 2007
970.5217-1	Work for Others Program (Non-DOE Funded Work)	Jan 2005
970.5222-1	Collective Bargaining Agreements-Management and Operating Contracts	Dec 2000
970.5222-2	Overtime Management	Dec 2000

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution	Dec 2000
970.5223-3	Agreement Regarding Workplace Substance Abuse Programs at DOE Sites	Dec 2010
970.5223-4	Workplace Substance Abuse Programs at DOE Sites	Dec 2010
970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management	Oct 2010
970.5223-7	Sustainable Acquisition Program	Oct 2010
970.5226-1	Diversity Plan	Dec 2000
970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	Dec 2000
970.5226-3	Community Commitment	Dec 2000
970.5227-4	Authorization and Consent	Aug 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	Aug 2002
970.5227-6	Patent Indemnity-Subcontracts	Dec 2000
970.5227-8	Refund of Royalties	Aug 2002
970.5228-1	Insurance-Litigation and Claims	Jul 2013
970.5229-1	State and Local Taxes	Dec 2000
970.5231-4	Preexisting Conditions, Alternate I (DEC 2000), Alternate II (DEC 2000)	Dec 2000
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	Dec 2000
970.5232-3	Accounts, Records and Inspection	Dec 2010
970.5232-4	Obligation of Funds	Dec 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	Dec 2000
970.5232-7	Financial Management System	Dec 2000
970.5232-8	Integrated Accounting	Dec 2000
970.5236-1	Government Facility Subcontract Approval	Dec 2000
970.5242-1	Penalties for Unallowable Costs	Aug 2009

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
970.5243-1	Changes	Dec 2000
970.5245-1	Property	Aug 2016

C. FAR AND DEAR CLAUSES INCORPORATED IN FULL TEXT

I-1 FAR 52.202-1 DEFINITIONS (NOV 2013) (AS MODIFIED BY DEAR 952.202-1)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
- (e) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

I-2 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2014)

(a) Definitions.

“Bureau of Land Management,” as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

“Federal helium supplier” means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at http://www.nm.blm.gov/www/amfo/amfo_home.html.

“Major helium requirement” means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees

Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements --

(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier --

(i) The name of the supplier;

(ii) The amount of helium purchased;

(iii) The delivery date(s); and

(iv) The location where the helium was used.

(c) *Subcontracts* --The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

I-3 52.216-7 ALLOWABLE COST AND PAYMENT (JUN 2013)(AS MODIFIED BY DEAR 952.216-7) (MODIFIED 0017)

(a) *Invoicing.*

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance

with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs.*

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check or other form of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks

(d) *Final indirect cost rates.*

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

- (C) *Overhead expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.
- (D) *Occupancy expenses (intermediate indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.
- (E) Claimed allocation bases, by element of cost, used to distribute indirect costs.
- (F) Facilities capital cost of money factors computation.
- (G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.
- (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
- (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
- (J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).
- (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
- (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
- (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
- (N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).
- (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).
- (iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

- (A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.
- (B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at http://www.whitehouse.gov/omb/procurement_index_exec_comp/.
- (C) Identification of prime contracts under which the contractor performs as a subcontractor.
- (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).
- (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changes from the previous year's submission).
- (F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, etc).
- (G) Management letter from outside CPAs concerning any internal control weaknesses.
- (H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.
- (I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.
- (J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.
- (K) Federal and State income tax returns.
- (L) Securities and Exchange Commission 10-K annual report.
- (M) Minutes from board of directors meetings.
- (N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.
- (O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

- (i) the agreed-upon final annual indirect cost rates,
- (ii) the bases to which the rates apply,
- (iii) the periods for which the rates apply,
- (iv) any specific indirect cost items treated as direct costs in the settlement, and
- (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be --

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to, or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

I-4 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days of contract expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years.

I-5 FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS (MAY 2008)

- (a) *Definitions.* As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

- (b) The Contractor, on completion of this contract, shall—
 - (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of postconsumer material content; and
 - (2) Submit this estimate to the Contracting Officer.

I-6 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016)

(a) *Definition.* As used in this clause-

“Global warming potential” means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide’s global warming potential is defined as 1.0.

“High global warming potential hydrofluorocarbons” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

“Hydrofluorocarbons” means compounds that only contain hydrogen, fluorine, and carbon.

“Ozone-depleting substance,” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

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- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
 - (2) Class II, including, but not limited to, hydrochlorofluorocarbons..
- (b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by [42 U.S.C. 7671j](#) (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(c) *Reporting.* For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by—

- (i) Type of hydrofluorocarbon (*e.g.*, HFC-134a, HFC-125, R-410A, R-404A, *etc.*);
 - (ii) Contract number; and
 - (iii) Equipment/appliance;
- (2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after—
- (i) Annually by November 30 of each year during contract performance; and
 - (ii) At the end of contract performance.
- (d) The Contractor shall refer to EPA's SNAP program (available at <http://www.epa.gov/snap>) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at <http://www.epa.gov/snap>.

I-7 FAR 52.223-14 ACQUISITION OF EPEAT® -REGISTERED TELEVISIONS (JUN 2014)

(a) *Definitions.* As used in this clause—

“Television or TV” means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (*e.g.*, computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see www.epa.gov/epeat.

I-8 FAR 52.225-9 BUY AMERICAN-CONSTRUCTION MATERIALS (MAY 2014)

(a) *Definitions.* As used in this clause--

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.*

- (1) This clause implements the 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
- (2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: None.
- (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American statute.*

- (1)
 - (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and

- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
- (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
- (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.
- (d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

I-9 FAR 52.227-3 PATENT INDEMNITY (APR 1984)

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

**I-10 FAR 52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND
COMPENSATING TAX (APR 2003) (AS MODIFIED BY DEAR 970.2904-1(A)
(MODIFIED 0017)**

- (a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.
- (b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Payments and Advances clause of this contract except as provided in paragraph (d) of this clause.
- (c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

State of New Mexico Taxation and Revenue Dept.
Revenue Division
PO Box 630

Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the Department of Energy and the New Mexico Taxation and Revenue Department.

- (d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.
- (e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.
- (g) The Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the Department of Energy to represent its Contractor.
- (h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.
- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

I-11 FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid –
 - (1) By the Contractor under a cost-reimbursement contract; and
 - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to—

Contracting Officer

I-12 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<u>Federal Acquisition Regulations</u>	http://farsite.hill.af.mil/vffara.htm or https://www.acquisition.gov/far/index.html
<u>Federal Acquisition Forms</u>	http://www.gsa.gov/forms/farnumer.htm
<u>Department of Energy Acquisition Regulations</u>	http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation or http://farsite.hill.af.mil/vfdoea.htm

I-13 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

I-14 DEAR 952.204-2 SECURITY (MARCH 2011) CLASS DEVIATION (OCT 2013)

(a) *Responsibility.* It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the

Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations.* The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.

(c) *Definition of Classified Information.* The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive orders, which is identified as *National Security Information*.

(d) *Definition of Restricted Data.* The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) *Definition of Formerly Restricted Data.* The term "*Formerly Restricted Data*" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information-- (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) *Definition of National Security Information.* The term "*National Security Information*" means information that has been determined, pursuant to Executive Order 12958, *Classified National Security Information*, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) *Definition of Special Nuclear Material.* The term "*special nuclear material*" means-- (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Access authorizations of personnel.*

(1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of

1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must-- verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those-- (A) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the

cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office.

A. The date(s) each Review was conducted;

B. Each entity that provided information concerning the individual;

C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

E. The results of the test for illegal drugs.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

(j) *Foreign Ownership, Control, or Influence.*

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer. Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov>. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

I-15 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (AUG 2016)

(a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) (1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
- (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive -

- (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to -
 - 1. Negligence;
 - 2. Contributory negligence;
 - 3. Assumption of risk; or
 - 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
 - (v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in [10 CFR part 840](#).
 - (vi) For the purposes of that determination, *offsite* as that term is used in [10 CFR part 840](#) means away from “the contract location” which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above—
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

- (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

- (i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Effective date

() See Note II below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See Note III below for instructions related to this section on Relationship to General Indemnity.

NOTE I: Paragraph (i) of the clause will be replaced with "Reserved" in contracts specifically exempted from civil penalties by section 234 of the Act. That subsection provides that the following DOE contractors are not subject to the assessment of civil penalties:

- (1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;
- (2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;
- (3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;
- (4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;
- (5) Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

- (6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and
- (7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

NOTE II: Contracts with an effective date after the date of June 12, 1996, do not require the effective date provision in this clause. Delete the title. Use the EFFECTIVE DATE title and the following language, for those contracts: "() This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after ____."

- (1) Those that contained an indemnity pursuant to Public Law 85-840 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the contract modification that replaced the Public Law 85-804 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Amendments Act, this substitution must have taken place by February 20, 1989.
- (2) Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting "August 20, 1988."
- (3) Those with an effective date between August 20, 1988, and the date of the Final Rule, that (a) had "interim coverage" or (b) did not have "interim coverage" but have now been determined to be covered under the PAAA, include the effective date provision above, inserting the contract effective date.

NOTE III: The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added which do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m). "() To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply."

I-16 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000) (CLASS DEVIATION)

- (a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer (1) a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur; and, (2) a chart showing the name and organization of the Contractor's Parent Organization's responsible official for administering the Contractor's Parent Organization's Oversight Plan, and shall furnish supplemental information to reflect any changes as they occur.

- (b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any work off-site, at all times. *For purposes of this contract, the [insert name or title of resident supervisory representative of the contractor] is the resident supervisory representative of the contractor.*
- (c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of *the Administrator of the NNSA or the Secretary of Energy*, the Contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies. *Furthermore, nothing contained in this paragraph (c) shall in any way impair the statutory or contractual collective bargaining rights of union-represented contractor employees.*
- (d) Standards and procedures. The Contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the Contracting Officer.
- (e) *Nothing in this clause or its implementation is intended to conflict with 42 U.S.C. §7274p, or to otherwise affect the scientific integrity of persons required to provide independent technical judgments to provide the President or the Congress assurances on the safety, security, reliability, or effectiveness of the US nuclear weapons stockpile.*

**I-17 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)
(CLASS DEVIATION)**

- (a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency.
- (b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, *and National Nuclear Security Administration Policy Letters* identified in the *contract's Section J Appendix entitled "List of Applicable Directives" (the List)*. Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise *the List* by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising *the List*, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise *the List* and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the

potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise *the* List and so advise the Contractor not later than 30 days prior to the effective date of the revision of *the* List. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of *the* List *and fee may be adjusted* pursuant to the clause of this contract entitled, "Changes."

- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into *the* List as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by *the* List. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- (d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

I-18 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES—FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009) (NNSA CLASS DEVIATION OCT 2011)

(a) General.

- (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon—
 - (i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

- (ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.
- (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.
- (3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.
- (4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract, earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount.

- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.
- (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.
- (3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).
 - (i) Degree of control the Contractor had over the event or incident.
 - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

- (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
 - (iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
 - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).
 - (vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
- (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.
- (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.
- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming

aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

- (v) At the end of the contract—
 - (A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
 - (B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
 - (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.
 - (i) Type A accident (defined in DOE Order 225.1A).
 - (ii) Two Second Degree performance failures during an evaluation period.
 - (2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:
 - (i) Type B accident (defined in DOE Order 225.1A).

- (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
 - (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Manual 231.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.
 - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
 - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
 - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
 - (1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would

prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
- (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
- (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
- (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

I-19 DEAR 970.5215-4 COST REDUCTION (AUG 2009) (CLASS DEVIATION MAR 2011)

(a) General. It is the Department of Energy's (DOE's) / National Nuclear Security Administration's (NNSA) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (h) of this clause.

(b) Definitions.

"Administrative cost" is the Contractor cost of developing and administering the CRP.

"Development cost" is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

"DOE/NNSA cost" is the Government cost incurred implementing and validating the CRP.

"Implementation cost" is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

"Hard savings" means savings that directly reduce the overall cost of operations for the negotiated period of savings. Examples of hard savings include:

- i) Permanently eliminating or reducing recurring costs through innovative product designs, or process improvements;
- ii) Supply chain management activities resulting in actual savings (as opposed to potential or sourcing savings);
- iii) Integration of life cycle approaches for the design and development of systems that minimize costs (e.g. experimental, maintenance and operations);
- iv) Reducing direct or indirect material or labor costs;
- v) Reducing inventory levels of product or material, or reducing the cost of carrying the same levels;
- vi) Reducing utility or natural resource consumption; or
- vii) Reducing or eliminating scrap dollars/rates.

Net Savings means the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort when implementing a Government approved CRP along with any Contractor development costs,

DOE/NNSA cost, implementation costs, and administrative costs associated with the CRP.

Soft Savings means:

- i) savings that cannot be demonstrated to reduce the bottom line operating costs including, for example, labor efficiency improvements that increase productivity but do not reduce total hours worked;
- ii) savings that are intangible and consequently difficult to measure, for example, a wellness plan that is intended to reduce absenteeism, turnover or insurance costs; or
- iii) cost avoidances that cannot be demonstrated to lower cost of products/services based on a comparison against historical results, for example, slowing the rate of a cost increase.

(c) Consideration on Hard Savings

The Government's share of savings shall represent "hard savings" available for reprioritization by the DOE/NNSA. Proposed savings that will not be considered creditable by the Contracting Officer will include:

- (1) Savings resulting from formal or informal NNSA direction or changes in mission, work scope, or routine Contractor adjustments due to budget changes;

(2) Underruns resulting from anything other than a Contractor efficiency improvement, including but not limited to additional NNSA funding, shifting of work scope to a future fiscal year, (e.g. moving upgrades to facilities or infrastructure to out years with no evidence of savings or computer buys that are routinely purchased on a 3 year bases are deferred for an additional two years) deferred maintenance, re-categorizing direct/indirect costs, or increases in the direct allocation bases;

(3) Site office initiatives, direction, work scope changes, mission changes, or reorganization, unless the Contractor can demonstrate a significant role in achieving savings resulting from the site office actions;

(4) Savings that have a negative impact on any existing Contract requirements such as scope, safety, or security;

(5) Soft savings; and

(6) Savings that have been credited elsewhere under this contract.

(d) Procedure for submission of CRPs.

CRPs submitted by the Contractor shall contain, at a minimum, the following:

(1) Current Method (Baseline)-A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.

(2) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.

(3) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

(e) Evaluation and Decision. All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may—

(1) Pose a risk to the health and safety of workers, the community, or to the environment;

(2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;

(3) Require a change in other contractual agreements;

(4) Result in significant organizational and personnel impacts;

- (5) Create a negative impact on the cost, schedule, or scope of work in another area;
- (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
- (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
- (8) Significantly impact internal controls.

(f) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer based on but not limited to the evaluation criteria established in paragraph (c) and (e). The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will—

- (1) Result in net savings (in the sharing period if a design, process, or method change);
- (2) Not reappear as costs in subsequent periods; and
- (3) Not result in any impairment of essential functions (e.g. safety and security).

(g) The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. The sharing arrangement shall be as follows:

- (1) 50% of the net savings shall be the Government's share of savings,
- (2) 10% of the net savings shall be share of savings fee payable to the Contractor,
- (3) 40% of the shared savings shall remain at the DOE/NNSA site and may be negotiated under the CRP for the following contract activities consistent with the other terms and conditions of this contract:

- i) Program, project, or indirect cost activities to finance additional mission work that has been approved by the HQ office;
- ii) Projects that serve the M&O site as a whole, such as a parking structure, an office building or building a cafeteria that doesn't serve a discrete program and could be built with institutional general plant project funds;
- iii) Employee compensation for non-key personnel in accordance with Appendix A. For the purposes of this clause, "employee compensation" means a one-time non-

base lump sum payment which does not count towards the employee's pensionable earnings.

The specific percentage and sharing period shall be pre-negotiated and set forth in the contractual document and may span multiple years, however, cost sharing in future years will be contingent upon availability of funds and the Contracting Officer certifying each year that the savings have been sustained.

(i) Validation of Shared Net Savings. Each year the Contractor shall certify the amount of savings achieved that year and that the Government's share of savings is available for redirection. The Contracting Officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the Contractor will not be entitled to a share of savings. If the savings are validated, the Government will decide how to redirect its share of the funds.

(j) Relationship to Other Incentives. Only those benefits of an accepted CRP not awardable under other clauses of this contract shall be considered under this clause.

(k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

**I-20 DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000)
ALTERNATE I (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)**

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (h) of this clause.
- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (i) of this clause.
- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.
- (8) *Open Source Software, as used in this clause, means computer software that is distributed under a license in which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).*
- (9) *Patent Counsel means the National Nuclear Security Administration (NNSA) Patent Counsel assisting the DOE/NNSA contracting activity.*

(b) Allocation of Rights.

- (1) *Except as may otherwise expressly provided or directed in writing by the Patent Counsel the Government shall have:*
 - (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time

or, where, approved by DOE/NNSA, appropriate instances of the DOE /NNSA Work for Others Program;

- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE/NNSA personnel to perform such inspection;
- (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"); and
- (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE/NNSA concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE/NNSA will notify the Contractor of the action taken.

(2) The Contractor shall have:

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and
- (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE, NNSA or a third party, including a DOE or NNSA contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE/NNSA, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

- (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.
- (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles)

- (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
- (2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy/*National*

Nuclear Security Administration. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

- (3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE and NNSA to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.
- (e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:
 - (1) Contractor Request to Assert Copyright.
 - (i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:
 - (A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,
 - (B) The program under which it was funded,
 - (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,
 - (D) Whether the data is subject to export control,
 - (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and

- (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's and NNSA's dissemination responsibilities.
- (ii) For data that is developed using other funding sources in addition to DOE *or* NNSA funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.
- (iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE/NNSA will be expressly withheld. Such excepted categories include data whose release
 - (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes,
 - (B) would not enhance the appropriate transfer or dissemination and commercialization of such data,
 - (C) would have a negative impact on U.S. industrial competitiveness,
 - (D) would prevent DOE *or* NNSA from meeting its obligations under treaties and international agreements, or
 - (E) would be detrimental to one or more of DOE's *or* NNSA's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property *and/or* the NNSA Patent Counsel. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE *or* NNSA may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

(2) DOE/NNSA Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE/NNSA's permission for the Contractor to assert copyright or advise the Contractor that DOE/NNSA needs additional time to respond, and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) An abstract describing the software suitable for publication,

(B) the source code for each software program, and

(C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software.

The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE/NNSA designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, NNSA, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE/NNSA approval. The DOE/NNSA approval will be based on the standard that the work is still commercially available and the market demand is being met.

- (iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
- (v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. (insert contract number) with the Department of Energy/*National Nuclear Security Administration*. For (period approved by NNSA Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE/NNSA. Neither the United States nor the United States Department of Energy/*National Nuclear Security Administration*, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

- (vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE/NNSA has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e)(3)(iii) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE/NNSA determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing

commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE/NNSA shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE/NNSA to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 --"Appeals."

- (vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE *or* NNSA Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.
- (viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.
- (4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the *DOE/NNSA* to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy/*National Nuclear Security Administration* (DOE/NNSA). All rights in the computer software are reserved by DOE/NNSA on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public.

NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

- (5) A similar notice can be used for data, other than computer software, upon approval of Patent Counsel.
- (f) *Open Source Software. The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source software license. Such software shall hereinafter be referred to as Open Source Software or OSS, subject to the following:*

- (1) *Obtain Program Approval.*

- (i) *The Contractor shall ensure that the DOE or NNSA Program or Programs that have provided funding (Funding Source) to develop the software have approved the distribution of the software as OSS. The funding Program(s) may provide blanket approval for all software developed with funding from that Program. However, OSS release for any one such software shall be subject to approval by all other funding Programs which provide a substantial portion of the funds for the software, if any. If approval from the funding Program(s) is not practicable, Patent Counsel may provide approval instead. For software jointly developed under a CRADA or User Facility, or WFO, authorization from the CRADA Participant(s) or User Facility User(s), or WFO, as applicable, shall be additionally obtained for OSS release.*
 - (ii) *If the software is developed with funding from a federal government agency or agencies other than DOE or NNSA, then authorization from all the funding source(s) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, Patent Counsel may provide approval instead.*
- (2) *Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, or WFO, either by the Contractor, CRADA Participant, or User Facility User, or WFO, as applicable, which precludes marking such OSS as Protected Information.*
- (3) *Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE or NNSA) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.*
- (4) *OSS Record. The Contractor must maintain a record, available for inspection by DOE or NNSA, of software distributed as OSS. The record shall contain the following information: (i) name of the computer software (or other identifier), (ii) an abstract with description or purpose of the software, (iii) evidence of the funding Program's or source's approval, (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered; (vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.*
- (5) *Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, NNSA, or other industry standard means.*

- (6) *Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property and/or NNSA Patent Counsel may periodically issue guidance on OSS licenses. Each Contractor created OSS license, must contain, at a minimum, the following provisions:*
- (i) *A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and*
 - (ii) *A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.*
- (7) *Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.*
- (8) *Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.*
- (9) *Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews of the derivative versions.*
- (10) *Determine if Trademark Protection for the OSS is Appropriate. DOE and NNSA Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.*
- (11) *Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute*

copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

- (12) *Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is publicly available. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.*

(g) Subcontracting.

- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE/NNSA.
- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
- (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

- (h) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. *(insert contract number)* with the United States Department of Energy/*National Nuclear Security Administration* which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

- (i) Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice --Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy/*National Nuclear Security Administration* Contract No. (*insert contract number*). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice --Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE/NNSA Contract No. *(insert contract number)* with (name of Contractor).

(End of Notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."
- (j) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

I-21 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002) ALTERNATE II (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

- (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Facilities, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Facilities consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of

Chapter 38 of the Patent Laws ([35 U.S.C. 200 et seq.](#)); Section 152 of the Atomic Energy Act of 1954, as amended ([42 U.S.C. 2182](#)); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 ([42 U.S.C. 5908](#)); and Executive Order 12591 of April 10, 1987.

- (2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Facilities; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Facilities that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel *exchanges*, assignments, and licensing in accordance with this clause.
- (3) *Nothing in this, or any other section of this contract provides the Contractor with any property right, including the right to license, in data first produced in the performance of this contract, except as expressly provided in the contract or approved in writing by the Contracting Officer.*

(b) Definitions.

- (1) Contractor's Facilities Director means the individual who has supervision over all or substantially all of the Contractor's operations at the facilities.
- (2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.
- (3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Facilities, and one or more parties including at least one non-Federal party under which the Government, through its Facilities, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Facilities; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.
- (4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Facilities Director or designee which describes the following:

- (i) Purpose;
 - (ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;
 - (iii) Schedule for the work; and
 - (iv) Cost and resource contributions of the parties associated with the work and the schedule.
- (5) Assignment means any agreement by which the Contractor transfers ownership of Facilities' Intellectual Property, subject to the Government's retained rights.
- (6) Facilities' Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Facilities' employees or through the use of Facilities' *research resources*.
- (7) Facilities' Tangible Research Product means tangible material results of research which
- (i) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;
 - (ii) Are not materials generally commercially available; and
 - (iii) Were made under this contract by Facilities' employees or through the use of Facilities' *research resources*.
- (8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Facilities' Biological Materials or Facilities' Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.
- (9) *Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.*
- (c) Allowable Costs.
- (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the *Facilities* for that fiscal year without written approval of the contracting officer.

- (2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance -- Litigation and Claims" of this contract.
- (d) Conflicts of Interest -- Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in *the Facilities* research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:
 - (1) Inform employees of and require conformance with standards of conduct and integrity in connection with *research involving nonfederal sponsors and for CRADA* activity in accordance with the provisions of paragraph (n)(5) of this clause;
 - (2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;
 - (3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE *and NNSA* projects and programs;
 - (4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;
 - (5) Conduct DOE- *and NNSA*-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;
 - (6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE *or NNSA* or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

- (7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;
 - (8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a *Facilities* employee within the previous two years or to the company in which the individual is a principal;
 - (9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; *and*
 - (10) Notify *NNSA* prior to *the Contractor's acting in an advisory role for evaluation of a technical proposal for funding by a third party or a DOE or NNSA Program*, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.
- (e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the *Facilities* and by entities other than the Contractor.
- (f) U.S. Industrial Competitiveness.
- (1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, *the Contractor shall* give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its *decisions involving licensing or assignment of Facilities' intellectual property* where the *Contractor* obtains rights during the course of the Contractor's operation of the *Facilities* under this contract:
 - (i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or
 - (ii) (A) whether a proposed licensee or an assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and
 - (B) in licensing *or assigning* any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development

agreements and licensing agreements, and has policies to protect United States Intellectual Property rights; *and*

- (C) *if the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (B) herein, may rely upon the following information; (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative Special 301 Report, and, (3) such other relevant information available to the contracting officer. The Contractor should review the U.S. Trade Representative web site at: <<http://www.ustr.gov>> for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision.*
- (2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause is likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.
- (3) The Contractor agrees to be bound by the provisions of [35 U.S.C. 204](#) (Preference for United States industry).
- (g) Indemnity -- Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.
- (h) Disposition of Income.
- (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Facilities, consistent with the research and development mission and objectives of the Facilities and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended ([15 U.S.C. 3710a\(b\)\(5\)](#)) and Chapter 38 of the Patent Laws ([35 U.S.C. 200](#) et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the

Facilities' budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

- (2) The Contractor shall include as a part of its annual Facilities Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Facilities, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.
 - (3) The Contractor shall *notify* the Contracting Officer *of any changes to its policy* for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer. *Such changes shall be subject to the approval of the Contracting Officer.*
- (i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Facilities shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Facilities, to the successor contractor or to the Government as directed by the contracting officer.
- (j) Technology Transfer Affecting the National Security.
- (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable NNSA to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE/NNSA's nuclear weapon production complex. NNSA shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and NNSA shall promptly notify the Contractor as to whether the technology is transferable.
 - (2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S.

Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

- (3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.
- (k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE/NNSA and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE/NNSA to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE/NNSA and in such a format which will serve to adequately inform DOE/NNSA of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.
- (l) Reports to Congress. To facilitate DOE/NNSA's reporting to Congress, the Contractor is required to submit annually to DOE/NNSA a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Facilities innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.
- (m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Facilities Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.
- (n) Technology Transfer through Cooperative Research and Development Agreements. Upon approval of the contracting officer and as provided in a NNSA-approved Joint Work Statement (JWS), the Facilities Director, or designee, may enter into CRADAs on behalf of the DOE/NNSA subject to the requirements set forth in this paragraph. *Also, under such circumstances as DOE or NNSA considers appropriate, the DOE or NNSA may waive the following requirements associated with the submission and approval of JWS and CRADA agreements, as legislated by the 2001 National Defense Authorization Act.*
 - (1) Review and Approval of CRADAs.
 - (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Facilities Director

or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

- (ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.
 - (iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Facilities Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.
 - (iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.
- (2) Selection of Participants. The Contractor's Facilities Director or designee in deciding what CRADA to enter into shall:
- (i) Give special consideration to small business firms, and consortia involving small business firms;
 - (ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;
 - (iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and
 - (iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.
- (3) Withholding of Data.
- (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal

third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE/NNSA shall cooperate with the Contractor in protecting such data.

- (ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE *or* NNSA facilities for use by DOE/NNSA or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.
 - (iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.
- (4) Work for Others and User Facility Programs.
- (i) Work for Others (WFO) and User Facility Agreements (UFAs) *are* available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, who are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith, *when conditions associated with the activity under the agreement can appropriately be performed under such alternative agreement(s)*.
 - (ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.
 - (iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE/NNSA approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE/NNSA class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver that applies to the agreement.
- (5) Conflicts of Interest.

- (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:
 - (A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee –
 - (1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;
 - (2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or
 - (B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.
- (ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.
- (iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.
- (o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.
- (p) Technology Partnership Ombudsman.
 - (1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies

and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the Facilities, and technology licensing.

- (2) The Ombudsman shall be a senior official of the Contractor's Facilities staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the Facilities, shall function as such senior official.
- (3) The duties of the Technology Partnership Ombudsman shall include:
 - (i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the Facilities regarding technology partnerships, patents, and technology licensing;
 - (ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and
 - (iii) Submitting a quarterly report, in a format provided by DOE *and* NNSA, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.
- (q) *Inapplicability of Provisions to Privately Funded Technology Transfer Activities. Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity -- Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.*

I-22 DEAR 970.5227-12 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (AUG 2002) ALTERNATE I (NNSA CLASS DEVIATION OCT 2011)

(a) Definitions.

- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an

exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

- (4) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
- (5) Made, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.
- (6) Patent Counsel means *the National Nuclear Security Administration (NNSA)* Patent Counsel assisting the contracting activity.
- (7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.
- (9) Weapons-Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) Allocation of Principal Rights.

- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
- (2) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, *including weapons-related subject inventions*, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. *The Contractor does not have a right to retain title to any weapons-related subject inventions prior to being granted title by NNSA under the Class Waiver. In its elections of weapons-related subject inventions, the NNSA alone will make the*

determination that the subject invention is in fact a weapons-related subject invention, and that rights to the Contractor may be granted, based on specific procedural requirements that the Contractor must meet, as enumerated in the Class Waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

- (3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- (4) Foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE/NNSA, and DOE/NNSA may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.
 - (i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
 - (A) uranium enrichment technology;
 - (B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).
 - (ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:
 - (A) DOE Steel Initiative and Metals Initiative;

- (B) U.S. Advanced Battery Consortium;
 - (C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);
 - (D) *Solid State Energy Conversion Alliance (SECA) if the Contractor is a participant in the "Core Technology Program"; and*
 - (E) *Solid State Lighting Program (SSLP) if the Contractor is a participant in the "Core Technology Program."*
- (iii) DOE/NNSA reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE/NNSA exceptional circumstance subject inventions.
- (6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements *identified at <http://www.state.gov/documents/organization/123747.pdf>*. DOE/NNSA reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.
- (7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the

Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.

- (9) Government assignment of rights in Government employees' subject inventions. If a DOE or NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE or NNSA, *as applicable*, may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE or NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE or NNSA employee.
- (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.

- (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the contracting officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE/NNSA shall be in the form of a written report and shall include:
 - (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;
 - (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
 - (iv) the date and identification of any publication, on sale or public use of the invention;
 - (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

- (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE/NNSA under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

- (2) Publication after disclosure. After disclosure of the subject invention to the DOE/NNSA, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.
- (3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE/NNSA within two (2) years of the date of the disclosure of the subject invention to DOE/NNSA, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE/NNSA to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.
- (4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy

Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

- (5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:
 - (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.
 - (6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE/NNSA.
 - (7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR Part 40.
- (d) Conditions When the Government May Obtain Title Notwithstanding an Advance Class Waiver.
- (1) Return of title to a subject invention. If the Contractor requests that DOE/NNSA acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE/NNSA may acquire such title or rights from the Contractor, or DOE/NNSA may decide against acquiring such title or rights from the Contractor, at DOE/NNSA's sole discretion.
 - (2) Failure to disclose or elect to retain title. Title vests in DOE/NNSA and DOE/NNSA may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.
 - (3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided,

however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE/NNSA's written request for title, the Contractor continues to retain title in that country.

- (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA.
- (5) Termination of advance class waiver. DOE/NNSA may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE/NNSA, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) Minimum Rights of the Contractor.

- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE/NNSA may grant or refuse to grant such a request by the Contractor. If DOE/NNSA grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
- (2) Transfer of a Contractor license. DOE/NNSA shall approve any transfer of the Contractor's license in a subject invention, and DOE/NNSA may determine that the Contractor's license is non-transferable, on a case-by-case basis.
- (3) Revocation or modification of a Contractor license. DOE/NNSA may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE/NNSA licensing regulations. DOE/NNSA may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE/NNSA may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
- (4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE/NNSA shall furnish the Contractor a written notice of its

intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE/NNSA for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE/NNSA licensing regulations.

(f) Contractor Action to Protect the Government's Interest.

- (1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE *or* NNSA all instruments necessary to accomplish the following actions:
 - (i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;
 - (ii) convey title in a subject invention to DOE/NNSA pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or
 - (iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.
- (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) Contractor procedures for reporting subject inventions to DOE/NNSA. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE/NNSA. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.
- (4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.

- (5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy/*National Nuclear Security Administration*. The Government has certain rights in the invention."
- (6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.
- (7) DOE/NNSA approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE/NNSA.
- (8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
- (9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) Subcontracts.

- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.

- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.
- (4) DOE/NNSA and subcontractor contract. With respect to subcontracts at any tier, DOE/NNSA, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE/NNSA with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (h) Reporting on Utilization of Subject Inventions. Upon request by DOE *or* NNSA, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE *or* NNSA. Upon request by DOE *or* NNSA, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE *or* NNSA, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE *and* NNSA agree not to disclose such information to persons outside the Government, to the extent permitted by law.

- (i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE *or* NNSA may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-In Rights. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE *or* NNSA may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE/NNSA has the right to grant such a license itself if DOE/NNSA determines that-
 - (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.
- (l) Reports.
 - (1) Interim reports. Upon DOE's *or* NNSA's request, the Contractor shall submit to DOE *or* NNSA, no more frequently than annually, a list of subject inventions disclosed to DOE/NNSA during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state

whether the Contractor's invention disclosures were submitted to DOE/NNSA in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

- (2) Final reports. Upon DOE's *or* NNSA's request, the Contractor shall submit to DOE *or* NNSA, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility

- (1) to practice or have practiced by or for the Government at the facility, and
- (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) Atomic Energy.

- (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
- (2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) Classified Inventions.

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified

for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) Examination of Records Relating to Inventions.

- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
 - (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE/NNSA, and the Contracting Officer believes the unreported invention may be a subject invention, DOE *or* NNSA may require the Contractor to submit to DOE *or* NNSA a disclosure of the invention for a determination of ownership rights.
 - (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
 - (4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE *or* NNSA, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.
- (q) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE/NNSA in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (r) Educational Awards Subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to

treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

- (s) Annual Appraisal by NNSA Patent Counsel. NNSA Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE and NNSA policy.
- (t) Publication. *It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or NNSA or the Contractor, timely notification of the release of scientific and technical publications shall be provided to the Contractor personnel responsible for patent matters. Contractor delivery of this data and information to the Patent Counsel shall be considered met if the required data and information is entered into an appropriate database of listed publications and the Patent Counsel has "read-only" access to the database. A copy of this data and information must be made available to the Contracting Officer upon request.*
- (u) Termination of Contractor's Advance Class Waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE or NNSA relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE or NNSA shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

**I-23 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000) ALTERNATE III (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)
(MODIFIED 0017)**

- (a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may

be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.

- (b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-M. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after—
 - (1) Compliance by the Contractor with DOE/NNSA's patent clearance requirements; and
 - (2) The furnishing by the Contractor of—

- (i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance—Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
 - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the Contractor under this clause, there shall be deducted—
- (i) Any claim which the Government may have against the Contractor in connection with this contract; and
 - (ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

- (g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefore.
- (j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- (k) Review and approval of costs incurred. The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (*41 U.S.C. 256*), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

**I-24 DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000)
(NNSA CLASS DEVIATION OCT 2011)**

Any uncollectible receivables resulting from the Contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor for the Contractor's uncollected receivables. The Contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE and NNSA directives clause of this contract and such advance cannot be obtained. The Contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable

work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE *and* NNSA directives clause of this contract have elapsed. The Contractor's utilization of contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

I-25 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (JAN 2013) (CLASS DEVIATIONS: AUG 2011, JUN 2013, MAR 2015) (PROPOSED NNSA CLASS DEVIATION)

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR subpart 970.41.

(c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) *Audit of Subcontractors.*

(1) The Contractor shall provide for—

- (i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and
- (ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor

shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) Bonds and Insurance.

(1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of \$150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$35,000, but not greater than \$150,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize

the Contractor to make determinations of non-availability for individual items valued at \$500,000 or less.

(h) *Construction and Architect-Engineer Subcontracts.*

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) *Prevention of Conflict of Interest.*

(i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed

and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

- (1) Motor vehicles—48 CFR 908.7101
- (2) Aircraft—48 CFR 908.7102
- (3) Security Cabinets—48 CFR 908.7106
- (4) Alcohol—48 CFR 908.7107
- (5) Helium—48 CFR subpart 8.5
- (6) Fuels and packaged petroleum products—48 CFR 908.7109
- (7) Coal—48 CFR 908.7110
- (8) Arms and Ammunition—48 CFR 908.7111
- (9) Heavy Water—48 CFR 908.7121(a)
- (10) Precious Metals—48 CFR 908.7121(b)
- (11) Lithium—48 CFR 908.7121(c)
- (12) Products and services of the blind and severely handicapped—41 CFR 101-26.701
- (13) Products made in Federal penal and correctional institutions—41 CFR 101-26.702.

(r) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

- (1) At time of original acquisition;
- (2) When lease renewals are being considered; and
- (3) At other times as circumstances warrant.

(s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts

49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract.

Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) *Unclassified Controlled Nuclear Information*. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract Flowdown Requirements*. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

- (1) Davis-Bacon *Construction Wage Rate Requirements (formerly known as the Davis-Bacon Act)* clauses prescribed in 48 CFR 22.407.
- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract *Labor Standards Act* clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (7) Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207.
- (8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.
- (9) Minimum Wages under Executive Order 13658 clause prescribed in 48 CFR 22.1906.
- (10) *Rights to Proposal Data (Technical)* clause prescribed in 48 CFR 27.409(l).
- (11) *Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (formerly known as the Walsh-Healy Public Contracts Act)* clause prescribed in 48 CFR 22.610.
- (12) *Patent Indemnity* clause prescribed in 48 CFR 27.201-2(c).

(y) *Legal Services*. Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

(End of clause)

I-26 DEAR 952.227-82 RIGHTS TO PROPOSAL DATA (APRIL 1994) (MOVED TO FULL TEXT - 0017)

Except for technical data contained on all pages of the contractor's original proposal dated February 10, 2015, as well as its final proposal dated May 14, 2015, which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.